

PROPERTY OF
SUPREME COURT
State of Montana

The Titles of This Code Are
Arranged and Numbered as Follows

Volume 1

- | | |
|---|-----------------------------------|
| 1. Aeronautics | 6. Bonds and Undertakings |
| 2. Agency | 7. Building and Loan Associations |
| 3. Agriculture, Horticulture and Dairying | 8. Carriers and Carriage |
| 4. Alcoholic Beverages | 9. Cemeteries |
| 5. Banks and Banking | 10. Children and Child Welfare |
| | 11. Cities and Towns |

Volume 2

- | | |
|--|---------------------------------|
| 12. Codes and Laws | 20. Deposit |
| 13. Contracts | 21. Divorce |
| 14. Cooperatives | 22. Dower |
| 15. Corporations | 23. Elections |
| 16. Counties | 24. Electric Lines Construction |
| 17. Damages and Relief | 25. Fees and Salaries |
| 18. Debtor and <u>Creditor</u> | 26. Fish and Game |
| 19. Definitions and General Provisions | 27. Food and Drugs |

Volume 3

- | | |
|---|---------------------------------------|
| 28. Forests and Forestry | 41. Labor |
| 29. Fraudulent Conveyances | 42. Landlord and Tenant—Hiring |
| 30. Guaranty, Indemnity and Suretyship | 43. Legislature and Enactment of Laws |
| 31. Highway Patrol | 44. Libraries |
| 32. Highways, Bridges and Ferries | 45. Liens |
| 33. Homesteads | 46. Livestock |
| 34. Hotels | 47. Loans |
| 35. Housing | 48. Marriage |
| 36. Husband and Wife | 49. Maxims of Jurisprudence |
| 37. Initiative and Referendum | 50. Mines and Mining |
| 38. Insane and Feeble Minded | 51. Monopolies |
| 39. Instruments, Acknowledgment and Proof | 52. Mortgages |
| 40. Insurance and Insurance Companies | 53. Motor Vehicles |
| | 54. Narcotic Drugs |
| | 55. Negotiable Instruments |

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**PROPERTY OF
SUPREME COURT
State of Montana**

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OF MONTANA**

**The Titles of This Code are
Arranged and Numbered as Follows**

Volume 4

- | | |
|---|-------------------------------------|
| 56. Notaries and Commissioners of Deeds | 66. Professions and Occupations |
| 57. Nuisances | 67. Property |
| 58. Obligations | 68. Public Employees Retirement Act |
| 59. Offices and Officers | 69. Public Health and Safety |
| 60. Oil and Gas | 70. Public Utilities |
| 61. Parent and Child | 71. Public Welfare and Relief |
| 62. Parks and Public Recreation | 72. Railroads |
| 63. Partnership | 73. Recording Transfers |
| 64. Persons and Personal Rights | 74. Sales and Exchange |
| 65. Pledges and Trust Receipts | 75. Schools |

Volume 5

- | | |
|--|--|
| 76. Soil Conservation | 81. State Lands |
| 77. Soldiers, Sailors and Military Affairs | 82. State Officers, Boards and Departments |
| 78. State Capitol | 83. State Sovereignty and Jurisdiction |
| 79. State Finance | 84. Taxation |
| 80. State Institutions | |

Volume 6

- | | |
|-------------------------------|---|
| 85. Trade-marks | 90. Weights—Measures and Grades—Time—Money |
| 86. Trusts and Uses | 91. Wills, Succession, Probate and Guardianship |
| 87. Unemployment Compensation | 92. Workmen's Compensation Act |
| 88. Warehouses and Storage | |
| 89. Waters and Irrigation | |

Volume 7

93. Civil Procedure

Volume 8

94. Crimes and Criminal Procedure

Volume 9

General Index

Tables of Session Laws and Corresponding Sections

REVISED CODES OF MONTANA

1947

ANNOTATED

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NINE VOLUMES

OF MONTANA

COMPILED, REVISED AND ANNOTATED
UNDER CHAPTER 184, LAWS OF 1945 AND CHAPTER 266, LAWS OF 1947
AND PUBLISHED UNDER CHAPTER 43, LAWS OF 1947

I. W. Choate
Wesley W. Wertz
CODE COMMISSIONERS

REPLACEMENT

VOLUME 2

Codes and Laws to Food and Drugs

Containing the Permanent Laws of the State in
Force at the Close of the Thirty-fourth
Legislative Assembly of 1955

Publishers
THE ALLEN SMITH COMPANY
Indianapolis, Indiana



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PREFACE

AN EXPLANATORY STATEMENT

In order to prolong the life of REVISED CODES OF MONTANA, 1947, and to provide for the substantial and constant increase in new legislation, a program to replace volumes that have become too cumbersome was inaugurated with the approval of the Montana Bar Association. By eliminating obsolete material and inserting the new laws and decisions as found in the current pocket supplements of the volumes to be reissued, the 1947 Codes may be continued and used to full advantage for years to come.

The primary purpose in reissuing volume two was to bring the material therein to date in all respects, remove laws that have become obsolete through actions of the Montana legislatures since 1947, insert new laws and amendments adopted since 1947 and add the decisions of the Montana and United States courts handed down since publication of the 1947 Codes.

In short the material as contained in the 1955 pocket supplement to volume two has been inserted in the proper places and obsolete laws have been deleted. Notes indicating repeals have been inserted for ready reference.

The General Index in volume nine and in the pocket supplement for that volume may be used as readily for locating statutes in this replacement volume as in the original volume.

The numbering, arrangement, legislative history references, abbreviations and other fine features of the original volume have been retained in this replacement and no changes in the general style have been made. For further explanation of numbering and arrangement, we recommend a thorough reading of the preface in volume one of the 1947 Codes.

This volume is a compilation of existing legislation in Title 12, Codes and Laws, to and including Title 27, Food and Drugs, through the thirty-fourth legislative assembly of 1955 and excluding local and special laws, appropriation acts, resolutions, titles and enacting and repealing clauses.

The annotations to the decisions of the Supreme Court of Montana and to the Supreme Court of the United States and other Federal courts have been brought up to and including volume 127 Montana Reports and subsequent Montana decisions to and including volume 277 Pacific 2d, volume 347 United States Reports, volume 98 Lawyers' Edition, volume 74 Supreme Court Reporter, volume 216 Federal Reporter 2d, volume 124 Federal Supplement, volume 14 Federal Rules Decisions and 39 American Law Reports 2d.

This volume may be cited as Repl. Vol. 2, Revised Codes of Montana, 1947. When referring to sections, we recommend citing "Sec. —, Repl. Vol. 2, Revised Codes of Montana, 1947."

Keen appreciation is extended to Wesley W. Wertz, code commissioner of the 1947 Codes, for his able assistance and advice in the preparation of this Replacement.

The Publishers

SUMMARY OF CONTENTS OF REVISED CODES OF MONTANA, 1947

VOLUME 1

MAGNA CHARTA
DECLARATION OF INDEPENDENCE
CONSTITUTION OF THE UNITED STATES OF AMERICA
AMENDMENTS TO THE CONSTITUTION OF THE UNITED STATES
INDEX TO THE CONSTITUTION OF THE UNITED STATES
OF AMERICA
ACTS OF CONGRESS RELATING TO THE AUTHENTICATION OF LAWS
AND RECORDS
ORGANIC ACT OF THE TERRITORY OF MONTANA
THE ENABLING ACT
INDEX TO ENABLING ACT
CONSTITUTION OF THE STATE OF MONTANA
INDEX TO THE CONSTITUTION OF THE STATE OF MONTANA
TITLE 1, AERONAUTICS, TO TITLE 11, CITIES AND TOWNS

VOLUME 2

TITLE 12, CODES AND LAWS, TO TITLE 27, FOOD AND DRUGS

VOLUME 3

TITLE 28, FORESTS AND FORESTRY, TO TITLE 55, NEGOTIABLE
INSTRUMENTS

VOLUME 4

TITLE 56, NOTARIES AND COMMISSIONERS OF DEEDS, TO TITLE 75,
SCHOOLS

VOLUME 5

TITLE 76, SOIL CONSERVATION, TO TITLE 84, TAXATION

VOLUME 6

TITLE 85, TRADE-MARKS, TO TITLE 92, WORKMEN'S COMPENSATION
ACT

VOLUME 7

TITLE 93, CIVIL PROCEDURE

VOLUME 8

TITLE 94, CRIMES AND CRIMINAL PROCEDURE

VOLUME 9

GENERAL INDEX
TABLES OF SESSION LAWS AND CORRESPONDING SECTIONS

TABLE OF CONTENTS

Volume 2

TITLE 12. CODES AND LAWS

- Chapter 1. Law defined—how expressed—applicability of common law.
- 2. The enactment, effect, arrangement and construction of the codes.
- 3. Revised Codes of Montana 1947, codification authorized.
- 4. Commission on uniform state laws.

TITLE 13. CONTRACTS

- Chapter 1. Definition and essentials of contract.
- 2. Parties to contract.
- 3. Consent.
- 4. Object.
- 5. Consideration.
- 6. Creation of contracts—oral and written.
- 7. Interpretation of contracts.
- 8. Unlawful contracts.
- 9. Extinction of contracts—rescission—alteration—cancellation.

TITLE 14. COOPERATIVES

- Chapter 1. Credit unions.
- 2. Cooperative associations.
- 3. Cooperative agricultural corporations and districts.
- 4. Cooperative marketing act.
- 5. Rural electric cooperative act.

TITLE 15. CORPORATIONS

- Chapter 1. The creation of private corporations.
- 2. Change in organization—amendment of articles—extension of life of certain corporations.
- 3. By-laws.
- 4. Directors.
- 5. Meetings of stockholders and directors—elections.
- 6. Corporate stock and rights of stockholders—uniform stock transfer act.
- 7. Assessments.
- 8. Powers and duties of corporations.
- 9. Procedure for sale of corporate property.
- 10. Corporate records.
- 11. Dissolution of corporations by quo warranto—by decree of court—by act of directors and by other methods.
- 12. Scope of law—legislature may repeal.
- 13. Colleges and seminaries, incorporation of.
- 14. Religious, social and benevolent corporations.
- 15. Religious corporations sole.
- 16. Mining corporations—transfer agencies.
- 17. Foreign corporations.
- 18. Merger of corporations engaged in petroleum products business.
- 19. Consolidation or merger of corporations.

TITLE 16. COUNTIES

- Chapter 1. Definitions, courses and surveys.
- 2. County boundaries.
- 3. Removal of county seats.
- 4. Location of county seats.
- 5. Creation of new counties by petition and election.
- 6. Transfer of records and actions on creation of new counties—jury lists.
- 7. Change of name of counties.
- 8. General powers and limitations upon counties.

TABLE OF CONTENTS

TITLE 16. COUNTIES (Continued)

9. County commissioners—organization—meetings—compensation.
10. General powers and duties of county commissioners.
11. Special powers and duties of county commissioners.
12. County printing—commissioners to contract for.
13. County farm bureaus.
14. County fairs.
15. County land advisory board.
16. Rural improvement districts.
17. Weed control.
18. Claims against counties, county warrants.
19. County budget system.
20. County finance—bonds and warrants.
21. Release of lien of county seed grain loans.
22. Tax levy for road and bridge construction.
23. Vote necessary on proposal to raise money.
24. County officers—qualifications—general provisions.
25. Consolidation of county offices.
26. County treasurer—duties as to warrants and other county finances.
27. Sheriff.
28. County jails.
29. County clerk.
30. Clerk of the district court.
31. County attorney.
32. County auditor.
33. County surveyor.
34. County coroner.
35. Public administrator—reference to law governing.
36. Constable and justices of the peace.
37. Deputy county officers.
38. County charges.
39. County manager form of government.
40. Abandonment of counties.
41. County planning and zoning districts.
42. Mosquito control districts.
43. Public hospital districts.

TITLE 17. DAMAGES AND RELIEF

- Chapter
1. Relief in general.
 2. Compensatory relief—damages—interest—exemplary damages.
 3. Measure of damages.
 4. Damages for wrongs.
 5. Penal damages.
 6. Value—how estimated—limitations of damages.
 7. Specific relief—purchases of property.
 8. Specific relief—performance of obligations.
 9. Specific relief—revision and rescission of contracts.
 10. Specific relief—cancellation of instruments.
 11. Preventive relief—injunctions.

TITLE 18. DEBTOR AND CREDITOR

- Chapter
1. Debtor and creditor—definitions and general provisions.
 2. Bulk sales.
 3. Assignments for benefit of creditors.

TITLE 19. DEFINITIONS AND GENERAL PROVISIONS

- Chapter
1. Definitions and construction of terms—holidays—other general provisions.

TITLE 20. DEPOSIT

- Chapter
1. Nature and class of deposit—obligations of depository.
 2. Deposit for keeping—gratuitous deposit.
 3. Deposit for keeping—storage—unclaimed property.
 4. Deposit for keeping—finding—lost property.
 5. Deposit for exchange.

TITLE 21. DIVORCE

- Chapter
1. Dissolution of marriage—divorcee.

TABLE OF CONTENTS

TITLE 22. DOWER

- Chapter 1. Dower.

TITLE 23. ELECTIONS

- Chapter 1. Time of holding elections—proclamations.
2. Publication of questions submitted to popular vote.
3. Qualifications and privileges of electors.
4. Election precincts.
5. Registration of electors.
6. Judges and clerks of elections.
7. Election supplies.
8. Nomination of candidates for special elections by convention or primary meetings or by electors.
9. Party nominations by direct vote—the direct primary.
10. Presidential electors and delegates to national conventions.
11. Ballots, preparation and form.
12. Conducting elections—the polls—voting and ballots.
13. Voting by absent electors.
14. Voting by absent electors in military service.
15. Registration of electors absent from county of their residence.
16. Voting machines—conduct of election when used.
17. Election returns.
18. Canvass of election returns—results and certificates.
19. Failure of elections—proceedings on tie vote.
20. Nonpartisan nomination and election of judges of supreme court and district courts.
21. Presidential electors, how chosen—duties.
22. Members of congress—elections and vacancies.
23. Recount of ballots—results.
24. Conventions to ratify proposed amendments to constitution of the United States.

TITLE 24. ELECTRIC LINES CONSTRUCTION

- Chapter 1. Regulation, construction of electric light, heat and power lines.

TITLE 25. FEES AND SALARIES

- Chapter 1. Fees of state officers.
2. Fees of county officers.
3. Fees and salaries of justices of the peace and constables.
4. Jurors' and witnesses' fees.
5. Salaries of state officers, deputies and employees.
6. Salaries of county officers, deputies and employees.

TITLE 26. FISH AND GAME

- Chapter 1. Fish and game commission and wardens—creation—powers and duties.
2. Fishing and hunting licenses.
3. Restrictions on taking fish and game—open and closed seasons.
4. Beaver—trapping—license—protection.
5. Protection of certain wild birds—sale of confiscated birds and animals.
6. Power of commission to dispose of game animals damaging property and oversupply of fish in Lake county—Repealed.
7. Shipment of animals from state.
8. Miscellaneous prohibitions.
9. Outfitter's license—taxidermist's license.
10. Disposal of fines—duties of courts—exceptions from act.
11. Game preserves, migratory bird reservations.
12. Permits for breeding game birds and animals—other regulations.
13. Fur dealer's license and regulations.
14. Fish restoration and management projects.

TITLE 27. FOOD AND DRUGS

- Chapter 1. Pure food and drug act.
2. Regulation, management and sale of insecticides, fungicides, rodenticides, herbicides and other economic poisons.
3. State board of food distributors—regulation of food stores and food stuffs.
4. Supervision of milk industry—state milk control board.
5. Oleomargarine.

TITLE 12

CODES AND LAWS

- Chapter 1. Law defined—how expressed—applicability of common law, 12-101 to 12-104.
2. The enactment, effect, arrangement and construction of the codes, 12-201 to 12-215.
 3. Revised Codes of Montana 1947, codification authorized, 12-301 to 12-334.
 4. Commission on uniform state laws, 12-401 to 12-404.
-

CHAPTER 1

LAW DEFINED—HOW EXPRESSED—APPLICABILITY OF COMMON LAW

- Section 12-101. Definition of Law.
- 12-102. How expressed.
- 12-103. Common law, when rule of decision.
- 12-104. Common law, applicability of.

12-101. (5670) Definition of Law. Law is a solemn expression of the will of the supreme power of the state.

History: En. Sec. 5150, Pol. C. 1895; re-en. Sec. 3550, Rev. C. 1907; re-en. Sec. 5670, R. C. M. 1921. Cal. Pol. C. Sec. 4466.

NOTE.—For history of the enactment of the Civil Code of 1895 see State ex rel. Cotter v. District Court, 49 M 146, 140 P 732.

References

Cited or applied as section 3550, Revised Codes, in Maronen v. Anaconda Copper Min. Co., 48 M 249, 261, 136 P 968; State

ex rel. Bennett v. Bonner, 123 M 414, 214 P 2d 747; State v. Israel, 124 M 152, 220 P 2d 1003, 1012; Bond v. Birk, 126 M 250, 247 P 2d 199, 205; State ex rel. Reid v. District Court, 126 M 489, 255 P 2d 693, 703; In re Kay's Estate, 127 M 172, 260 P 2d 391, 394.

Collateral References

Statutes⊖1.
82 C.J.S. Statutes § 3.

12-102. (5671) How expressed. The will of the supreme power is expressed:

1. By the constitution;
2. By statutes.

History: En. Sec. 5151, Pol. C. 1895; re-en. Sec. 3551, Rev. C. 1907; re-en. Sec. 5671, R. C. M. 1921. Cal. Pol. C. Sec. 4467.

References

Cited or applied as section 3551, Revised Codes, in Maronen v. Anaconda Copper Min. Co., 48 M 249, 261, 136 P 968; State ex rel. Bennett v. Bonner, 123 M 414, 214 P 2d 747; Bond v. Birk, 126 M 250, 247 P 2d 199, 205; State ex rel. Reid v. District Court, 126 M 489, 255 P 2d 693, 703.

Collateral References

Constitutional Laws⊖1 et seq.; Statutes⊖1.
16 C.J.S. Constitutional Law § 1; 82 C.J.S. Statutes § 3.

Title or subject of legislation relating to publication of legal notices. 26 ALR 2d 664.

Plurality of subjects on motor vehicle financial responsibility act. 35 ALR 2d 1013.

12-103. (5672) Common law, when rule of decision. The common law of England, so far as it is not repugnant to or inconsistent with the consti-

tution of the United States, or the constitution or laws of this state, or of the codes, is the rule of decision in all the courts of this state.

History: Ap. p. p. 356, Bannack Stat.; re-en. p. 388, Cod. Stat. 1871; re-en. Sec. 144, 5th Div. Rev. Stat. 1879; re-en. Sec. 201, 5th Div. Comp. Stat. 1887; amd. Sec. 5152, Pol. C. 1895; re-en. Sec. 3552, Rev. C. 1907; re-en. Sec. 5672, R. C. M. 1921. Cal. Pol. C. Sec. 4468.

"Common Law of England"

The words "common law of England" in this section providing that the common law of England, so far as it is not repugnant to or inconsistent with the constitution of the United States or the constitution or laws of Montana or of the codes, is the rule of decision in all the courts of Montana, means that body of jurisprudence as applied and modified by the courts in the United States up to the time such body of jurisprudence became a rule of decision in Montana, which time began with the first territorial legislature of Montana. *Smith Engineering Co. v. Rice*, 102 F 2d 492.

Construing a Statutory Departure from the Common Law Under This and Other Sections on Construction

In holding a contract void because the impossibility preventing performance was due to the nature of the thing the contracting company undertook to do, i. e. to obtain a yield of gasoline which could not, by any means be done, held, as against appellee's contention that under this section the common-law rule that the promise was enforceable because the company knew or had reason to know the facts disclosing the impossibility applied, that on the contrary, section 13-404, voiding the contract for impossibility and declaring the law (sec. 12-104) and departing from the common-law rule (sec. 10704, R. C. M. 1935, since repealed) is the only section that could apply. *Smith Engineering Co. v. Rice*, 102 F 2d 492, 497.

Operation and Effect

In the absence of a statute fixing the burden of proof, the common-law rule prevails. *Finlen v. Heinze*, 28 M 548, 564, 73 P 123.

Under the common law overflow waters of a stream which still form part of the stream may not be obstructed by a railroad company by a fill along its right of way without openings, so as to injure the property of another, and the doctrine must be enforced as the rule of decision in this state. *Fordham v. Northern Pacific Ry. Co.*, 30 M 421, 431, 76 P 1040. See *Wine v. Northern Pacific Ry. Co.*, 48 M 200, 208, 136 P 387. For the construction given by the courts of other states to

a statutory provision similar to the above, see *Edwards v. R. R. Co.*, 39 S. Car. 472, 18 S. E. 58, 39 Am. St. Rep. 746; *Cass v. Dicks*, 14 Wash. 75, 44 Pac. 113, 53 Am. St. Rep. 859; *McDaniel v. Cummings*, 83 Cal. 515, 23 Pac. 795, 8 L. R. A. 575, cited in *Fordham v. Northern Pacific Ry. Co.*, supra.

It was the rule at common law that Sunday was dies non juridicus, but the prohibition involved extended only to acts strictly judicial in character; it had no application whatever to ministerial acts. *State ex rel. Hay v. Alderson*, 49 M 387, 410, 142 P 210.

Many of the rules of the common law are inapplicable to our present-day conditions. This is particularly true of the law of contempt. *State ex rel. Metcalf v. District Court*, 52 M 46, 49, 155 P 278.

The common law of England means that body of jurisprudence as applied and modified by the courts of this country up to the time it became a rule of decision in this commonwealth. *Aetna Accident & Liability Co. v. Miller*, 54 M 377, 382, 170 P 760.

The common law has been a part of our system of jurisprudence from the organization of Montana territory to the present day. *State ex rel. Ford v. Young*, 54 M 401, 403, 170 P 947.

By adopting the common law, this state adopted the crown's prerogative with respect to public debts, and the state as sovereign is entitled to priority of payment over private creditors of the same debtor. *American Bonding Co. v. Reynolds*, 203 Fed 356, 358.

The common law of England is that body of jurisprudence as applied and modified by the courts of this country up to the time it became a rule of decision in this commonwealth. *Gas Products Co. v. Rankin*, 63 M 372, 389, 207 P 993.

References

Cited or applied as section 201, fifth division, Compiled Statutes of 1887, in *Forrester v. B. & M. Min. Co.*, 21 M 544, 556, 55 P 353; as section 5162, Political Code (erroneously), in *State ex rel. Nissler v. Donlan*, 32 M 256, 263, 80 P 244; as section 3552, Revised Codes, in *Maronen v. Anaconda Copper Min. Co.*, 48 M 249, 262, 136 P 968; *Jonosky v. Northern Pac. Ry. Co.*, 57 M 63, 187 P 1014; *Brown v. American Bonding Co.*, 210 Fed 844, 846; *Le Munyon v. Gallatin Valley Ry. Co.*, 60 M 517, 523, 199 P 915; *Simonsen v. Barth et al.*, 64 M 95, 100, 208 P 938; *Anderson et al. v. Wirkman*, 67 M 176, 182, 215 P 224; *Herrin v. Sutherland*, 74 M 587, 594, 241 P 328; *Conley v. Conley*, 92 M 425, 437, 15

P 2d 922; *Shields v. Shields*, 115 M 146, 155, 139 P 2d 528; *State ex rel. Cornwell v. District Court*, 122 M 266, 200 P 2d 706, 710; *Annala v. McLeod*, 122 M 498, 206 P 2d 811, 813.

Collateral References

Common Law 12.
15 C.J.S. Common Law § 11.
Generally, see 11 Am. Jur. 153, Common Law.

12-104. (10703) Common law, applicability of. In this state there is no common law in any case where the law is declared by the code or the statute; but where not so declared, if the same is applicable and of a general nature, and not in conflict with the code or other statutes, the common law shall be the law and rule of decision.

History: En. Sec. 3452, C. Civ. Proc. 1895; re-en. Sec. 8060, Rev. C. 1907; re-en. Sec. 10703, R. C. M. 1921.

Construing a Statutory Departure from the Common Law Under This and Other Sections on Construction

In holding a contract void because the impossibility preventing performance was due to the nature of the thing the contracting company undertook to do, i. e. to obtain a yield of gasoline which could not, by any means be done, held, as against appellee's contention that under section 12-103, the common-law rule that the promise was enforceable because the company knew or had reason to know the facts disclosing the impossibility applied, that on the contrary, section 13-404, voiding the contract for impossibility and declaring the law (this section) and departing from the common-law rule (sec. 10704, R. C. M. 1935, since repealed) is the only section that could apply. *Smith Engineering Co. v. Rice*, 102 F 2d 492, 497.

Meaning May Not Be Extended Far Beyond Its Remedial Purpose

To argue that the state by enacting subd. 10 of section 93-5814 relating to property exempt from execution, actually intended to exempt property used by the counties and cities and towns from foreclosure of liens and to permit foreclosure upon property belonging to the state or used by the sovereign authority of the state for public purposes would be extending the meaning of this section far beyond any possible remedial purpose sought to be effected by its enactment. No such construction was ever intended, and the legislature was laboring under some misapprehension that the sovereign power did not extend to counties and cities and towns. *Ackroyd v. Winston Bros. Co.*, 113 F 2d 657, 663.

Operation and Effect

There is in this state no action for money had and received, as such; and there is no common law in any case where the law is declared by the code. *Truro v. Passmore*, 38 M 544, 549, 100 P 966.

The legislature may alter or repeal the common law, and many of its rules have been abolished. *Cunningham v. Northwestern Improvement Co.*, 44 M 180, 216, 119 P 554.

Id. Common-law actions for negligence may be changed so as to cover happenings.

By adopting the common law, as shown in this section and section 11-804, this state adopted the crown's prerogative with respect to public debts, and the state as sovereign is entitled to priority of payment over private creditors of the same debtor. *American Bonding Co. v. Reynolds*, 203 Fed 356, 358.

Where a right sought to be asserted was not known to the common law at the time it became part of the jurisprudence of the state, authority for the right must be found in the acts of the legislature. *Simonsen v. Barth et al.*, 64 M 95, 100, 208 P 938; *Conley v. Conley*, 92 M 425, 437, 15 P 2d 922.

Held, that since there is no common law in Montana where the law is declared by the codes or the statutes, and under section 48-101, consent of the parties to marry is not alone sufficient to bring about the relation but in the absence of a solemnization there must be a public assumption of the relation, there is no common-law marriage in this state where such public assumption was absent. *State v. Newman*, 66 M 180, 190, 213 P 805.

Statutes are but continuations of the basic common law and are not presumed to make any alterations in it further than is expressly declared, and a statute made in the affirmative, without any negative expressed or implied, does not take away the common law, the rules of which are not to be overturned except by clear and unambiguous language. *State ex rel. La Point v. District Court*, 69 M 29, 33, 220 P 88.

Remedy Under Common Law and Statute

An occupying claimant may recoup the value of improvements placed on the land of another against the owner's claim for use and occupation under the common law as well as under section 93-6215. *Pritchard Petroleum Co. v. Farmers Co-op. Oil & Supply Co.*, 121 M 1, 190 P 2d 55, 62.

References

Cited or applied as section 3452, Code of Civil Procedure, in *Forrester v. Boston & M. C. C. & S. M. Co.*, 21 M 544, 557, 55 P 229; *McKnight v. Oregon Short Line R. R. Co.*, 33 M 40, 42, 82 P 661; as section 8060, Revised Codes, in *State v. Crowe*, 39 M 174, 178, 102 P 579; *Marron v. Great Northern Ry. Co.*, 46 M 593, 603, 129 P 1055; *Aetna Accident & Liability Co. v. Miller*, 54 M 377, 382, 170 P 760; *Tetrault v. Ingraham*, 54 M 524, 526, 171 P 1148; *Jonosky v. Northern Pac. Ry. Co.*, 57 M 63, 77, 187 P 1014; *American Bonding Co.*

v. Reynolds, 203 Fed 356, 357; *Brown v. American Bonding Co.*, 210 Fed 844, 846, 127 C. C. A. 406; *Grimstad et al. v. Johnson et al.*, 61 M 18, 22, 201 P 314; *Angell v. Lewistown State Bank et al.*, 72 M 345, 353, 232 P 90; *In re Connolly's Estate*, 73 M 35, 58, 235 P 408; *Mieyr v. Federal Surety Co. et al.*, 97 M 503, 510, 34 P 2d 982; *Annala v. McLeod*, 122 M 498, 206 P 2d 811, 813.

Collateral References

Common Law[Ⓒ]12.

15 C.J.S. Common Law § 11.

CHAPTER 2**THE ENACTMENT, EFFECT, ARRANGEMENT AND CONSTRUCTION OF THE CODES**

- Section 12-201. Laws, when retroactive.
 12-202. Codes, how construed.
 12-203. Provisions similar to existing laws, how construed.
 12-204. Tenure of office preserved.
 12-205. Construction of repeal as to certain officers.
 12-206. Actions, etc., not affected by this code.
 12-207. Limitations shall continue to run.
 12-208. Effect of codes on prior laws.
 12-209. Certain statutes preserved.
 12-210. Construction of the codes with relation to laws passed.
 12-211. Construction of the codes with relation to each other.
 12-212. Conflicting sections of the same chapter—which to prevail.
 12-213. Repeal of repealed statutes.
 12-214. Arrangement of codes not indicative of legislative intention—annotations not part of statutes.
 12-215. Meaning of words.

12-201. (3) Laws, when retroactive. No law contained in any of the codes or other statutes of Montana is retroactive unless expressly so declared.

History: En. Sec. 3, Pol. C. 1895; re-en. Sec. 3, Rev. C. 1907; amd. Sec. 1, Ch. 4, L. 1921; re-en. Sec. 3, R. C. M. 1921. Cal. Pol. C. Sec. 3.

NOTE.—For meaning of word “codes” as used in this chapter and generally in this codification, see secs. 12-318 to 12-320.

Cross-References

Enactment of laws, secs. 43-501 to 43-515.

Session laws, publication and distribution, secs. 82-2203, 82-2210.

Amendment to Bond Law

The amendment to section 11-2304 by Laws 1945, Ch. 62 did not apply to bonds issued prior to the enactment of such amendment. *Philipsburg v. Porter*, 121 M 188, 190 P 2d 676, 679.

Definitions

The terms “retroactive” and “retrospective” as applied to law, are used inter-

changeably and are synonymous. *Continental Oil Co. v. Montana C. Co.*, 63 M 223, 231, 207 P 116.

Intent of Legislature—From What Determinable

Where it becomes necessary to determine whether the legislature in enacting a statute “expressly declared” it retroactive within the meaning of section 3 (a rule of construction), providing that no law is retroactive unless expressly so declared, its intent in that behalf must be gathered from the act itself, and from no other source. *Mills v. State Board of Equalization et al.*, 97 M 13, 21, 33 P 2d 563.

Id. Held, that the provision of the income tax law as originally enacted, and of the amendment appearing in chapter 40, Laws Extra. Session of 1933-34 (84-4902) that the tax shall be collected “with respect to the taxable income for the calendar year 1933,” meaning “with reference to” that income, sufficiently shows that it

was the intention of the legislature to make the acts retrospective, within the meaning of the last rule above.

Interpretation

If it is unmistakable that an act was intended to operate retrospectively, that intention is controlling as to the interpretation of the statute, even though it is not expressly so stated. *Davidson v. Love*, 127 M 366, 264 P 2d 705, 707.

Operation and Effect

Our codes recognize retroactive legislation, when, it is expressly so declared. *State ex rel. Rankin v. District Court*, 70 M 322, 332, 225 P 804.

A statute which takes away or impairs vested rights, acquired under existing laws, or creates a new obligation, imposes a new duty or attaches a new disability, in respect to transactions already past is deemed retroactive. *Butte & Superior Min. Co. v. McIntyre*, 71 M 254, 263, 229 P 730.

Chapter 140, Laws of 1927, held not retroactive, it not expressly being made so. *Byrne v. Fulton Oil Co.*, 85 M 329, 336, 278 P 514. See also *Anderson v. Sunburst Oil & Refining Co.*, 89 M 175, 176, 178, 296 P 1108, and *Forbes v. Mid-Northern Oil Co.*, 90 M 297, 298, 2 P 2d 1018.

Curative statutes designed to legalize past acts generally can have no prospective operation. *Snidow v. Montana Home for the Aged*, 88 M 337, 344, 292 P 722.

This section is a rule of construction and in the absence of express language,

giving a statute retroactive effect, it will not be so construed. *State ex rel. Whitlock v. Board of Equalization*, 100 M 72, 84, 45 P 2d 684.

Presumptions

There is always a presumption that statutes are intended to operate prospectively only, and words ought not to have a retroactive operation unless they are so clear, strong and imperative that no other meaning can be annexed to them, or unless the intention of the legislature cannot be otherwise satisfied. Every reasonable doubt is resolved against a retroactive operation of a statute. *Educational Bonds Case*, 68 M 526, 528, 219 P 637. See also *State ex rel. City of Billings v. Osten*, 91 M 76, 79, 5 P 2d 562.

References

State ex rel. Blankenbaker v. District Court, 109 M 331, 333, 96 P 2d 936.

Collateral References

Statutes—263, 271.

82 C.J.S. Statutes §§ 414 et seq., 433.

50 Am. Jur. 492, Statutes, §§ 475 et seq.

Retroactive application of fireman's or policeman's pension statutes. 27 ALR 2d 978.

Retrospective operation of statutes relating to reimbursement of public for financial assistance to aged persons. 29 ALR 2d 737.

Retrospective application of statutes relating to trust investments. 35 ALR 2d 991.

12-202. (4) Codes, how construed. The rule of the common law that statutes in derogation thereof are to be strictly construed has no application to the codes or other statutes of the state of Montana. The codes establish the law of this state respecting the subjects to which they relate and their provisions and all proceedings under them are to be liberally construed with a view to effect their objects and to promote justice.

History: En. Sec. 4, Pol. C. 1895; re-en. Sec. 4, Rev. C. 1907; amd. Sec. 2, Ch. 4, L. 1921; re-en. Sec. 4, R. C. M. 1921. Cal. Pol. C. Sec. 4.

Cross-Reference

Penal statutes, construction, sec. 94-101.

Construction of Statutes Adopted from Sister States

Where Montana adopted a statute from a sister state prior to interpretation thereof by the highest court of that state, the supreme court of this state is not bound by the interpretation thereafter placed thereon by the foreign state if the reasoning does not appeal to it. *State ex rel. Kommers v. District Court*, 109 M 287, 291, 96 P 2d 271.

Construing a Statutory Departure from the Common Law Under This and Other Sections on Construction

In holding a contract void because the impossibility preventing performance was due to the nature of the thing the contracting company undertook to do, i. e. to obtain a yield of gasoline which could not, by any means be done, held, as against appellee's contention that under section 12-103, the common-law rule that the promise was enforceable because the company knew or had reason to know the facts disclosing the impossibility applied, that on the contrary, section 13-404, voiding the contract for impossibility and declaring the law (sec. 12-104) and departing from the common-law rule (sec. 10704, R. C. M. 1935, since repealed) is the only section

that could apply. *Smith Engineering Co. v. Rice*, 102 F 2d 492, 497.

Under section 12-202, contention that sections 53-201 et seq. (providing for service of process on secretary of state in action resulting from automobile accident) are in derogation of common law and must be strictly construed as unavailable to a nonresident plaintiff held untenable. The statutes must be liberally construed to effect their object. *State ex rel. Gallagher v. District Court*, 112 M 253, 264, 114 P 2d 1047.

Effect of Other Holdings

What the courts may have said touching other statutes or in effort to construe provisions similarly clear is not convincing when construing a particular statute before it. *State ex rel. Holcomb v. District Court*, 54 M 574, 577, 172 P 329.

Id. The statutory requirements as to examining an adverse party before instituting an action are simple, direct, and plain, so that no recourse need be had to similar statutes of other states, and the decisions thereon in those states, in order to understand them.

Liberal Construction

The codes establish the law of this state respecting the subjects to which they relate and their provisions and all proceedings under them are to be liberally construed with a view to effect their objects and to promote justice. *Corwin v. Bieswanger*, 126 M 337, 251 P 2d 252, 253.

Operation and Effect

The doctrine that a "statute in affirmation of the common law is to be construed as was the rule by that law" would, perhaps, be modified by this section. *Nelson v. Great Northern Ry. Co.*, 28 M 297, 322, 72 P 642.

The code establishes the law of this state respecting the subjects to which it relates. *Lawrence v. Westlake*, 28 M 503, 506, 73 P 119. See also *State v. Newman*, 66 M 180, 190, 213 P 805 and *Swords v. Occident Elevator Co.*, 72 M 189, 193, 232 P 189.

Though a statute must be liberally construed, still the court cannot go beyond its plain provisions. *Harrington v. Butte, Anaconda & Pacific Ry Co.*, 36 M 478, 483, 93 P 640.

A statute in derogation of the common law must be liberally, not strictly, construed. *Anderson et al. v. Kirkman*, 67 M 176, 183, 215 P 224. See also *Wall v. Brookman*, 72 M 228, 233, 232 P 774; *In re Connolly's Estate*, 73 M 35, 59, 235 P 408; *O'Hanion v. Great Northern Ry. Co.*, 76 M 128, 141, 245 P 518; *Chmielewska v. Butte & Superior Min. Co.*, 81 M 36, 42, 261 P 616; *State v. District Court et*

al., 83 M 400, 411, 272 P 525; *State ex rel. Bullard v. District Court*, 86 M 358, 361, 284 P 125; *McMullen v. Shields*, 96 M 191, 199, 29 P 652.

Not inharmonious with section 12-103. *Conley v. Conley*, 92 M 425, 437, 15 P 2d 922.

Under sections 12-202 and 94-101, the rule that statutes in derogation of the common law must be strictly construed does not apply to code provisions (including penal), liberal construction being the rule as to all; hence, prior decisions to the effect that section 15-811, relating to the liability of directors of corporations for the corporations' debts for failure to file an annual report, being penal in character and unknown to the common law, must be strictly construed, overruled. *Continental Supply Co. v. Abell et al.*, 95 M 148, 163, 24 P 2d 133.

Under the rule laid down by section 12-202, section 91-107 requiring certain formalities in execution of a will, must be liberally construed respecting the method by which the testator makes acknowledgment of his execution of the will. *In re Bragg's Estate*, 106 M 132, 140, 145, 76 P 2d 57.

The codes establish the law of this state respecting the subjects to which they relate, under this section, and it is for the legislature to declare the general spirit and policy of the law, and, it having spoken on the subject of change of venue as provided in sections 93-2904 and 93-2905, its declaration is conclusive upon the courts. *Shields v. Shields*, 115 M 146, 154, 139 P 2d 528.

The requirements of so-called teachers' tenure act with regard to notice of termination of employment are not mandatory and need not be strictly construed against school district in favor of teacher but the act should be liberally construed to effect general purpose. *Eastman v. School District No. 1*, 120 M 63, 180 P 2d 472, 476.

Related Section

See section 12-104.

References

Humbird et al. v. Arnet et al., 99 M 499, 44 P 2d 756; *In re Wilson's Estate*, 102 M 178, 195, 56 P 2d 733; *State ex rel. Board of County Commissioners of Valley County v. Bruce et al.*, 106 M 322, 330, 77 P 2d 403 (overruled by *Valley County v. Thomas et al.*, 109 M 345, 382, 97 P 2d 345); *Valley County v. Thomas*, 109 M 345, 373, 97 P 2d 345; *State ex rel. Langan v. District Court*, 111 M 178, 180, 107 P 2d 880; *Young v. Waldrop*, 111 M 359, 364, 109 P 2d 59; *Butte Miners' Union No. 1 v. Anaconda Copper Mining Co.*, 112 M 418, 433, 118 P 2d 148; *General Finance Co. v. Powell et al.*, 112 M 535,

540, 118 P 2d 751; *Schwartz v. Inspiration Gold Mining Co.*, 15 F Supp 1030, 1034; *McCarten v. Sanderson*, 111 M 407, 100 P 2d 1108, 1111; *State ex rel. Sullivan v. District Court*, 122 M 1, 196 P 2d 452, 454; *Waggoner v. Glacier Colony of Hutterites*, 127 M 140, 258 P 2d 1162, 1168.

Collateral References

Statutes—231, 235.

12-203. (5) Provisions similar to existing laws, how construed. The provisions of this code, so far as they are substantially the same as existing statutes, must be construed as continuations thereof, and not as new enactments.

History: En. Sec. 5, Pol. C. 1895; re-en. Sec. 5, Rev. C. 1907; re-en. Sec. 5, R. C. M. 1921. Cal. Pol. C. Sec. 5.

References

Smith Engineering Co. v. Rice, 102 F 2d 492.

82 C.J.S. Statutes §§ 385, 387.

50 Am. Jur. 395, Statutes, §§ 384 et seq.

Strict construction, as penal nature, of statute imposing liability for double the value of property of decedent embezzled, alienated, converted, or the like, before granting of administration or letters testamentary. 29 ALR 2d 250.

Collateral References

Statutes—147.

82 C.J.S. Statutes § 276.

50 Am. Jur. 331, Statutes, §§ 339 et seq.

12-204. (6) Tenure of office preserved. All persons who, at the time this code takes effect, hold office under any of the acts repealed, continue to hold the same according to the tenure thereof, except those offices which are not continued by one of the codes adopted at this session of the legislature, and excepting offices filled by appointment.

History: En. Sec. 6, Pol. C. 1895; re-en. Sec. 6, Rev. C. 1907; re-en. Sec. 6, R. C. M. 1921. Cal. Pol. C. Sec. 6.

Collateral References

Officers—49, 50.

67 C.J.S. Officers §§ 42, 47.

12-205. (7) Construction of repeal as to certain officers. When any office is abolished by the repeal of any act, and such act is not in substance re-enacted or continued in this code, such office ceases at the time the code takes effect.

History: En. Sec. 7, Pol. C. 1895; re-en. Sec. 7, Rev. C. 1907; re-en. Sec. 7, R. C. M. 1921. Cal. Pol. C. Sec. 7.

Collateral References

Officers—4.

67 C.J.S. Officers § 8.

12-206. (8) Actions, etc., not affected by this code. No action or proceeding commenced before this code takes effect, and no right accrued, is affected by its provisions, but the proceedings therein must conform to the requirements of this code as far as applicable.

History: En. Sec. 8, Pol. C. 1895; re-en. Sec. 8, Rev. C. 1907; re-en. Sec. 8, R. C. M. 1921. Cal. Pol. C. Sec. 8.

Operation and Effect

This section does not in any sense constitute a saving clause applicable to statutes generally. It is as its very terms suggest, an emergency measure intended to prevent the abatement of pending pro-

ceedings and the loss of existing rights consequent upon the adoption of the particular code and extends no further. *McCarthy v. Kelley et al.*, 63 M 223, 233, 207 P 116.

Collateral References

Statutes—271.

82 C.J.S. Statutes § 433.

12-207. (9) Limitations shall continue to run. When a limitation or period of time prescribed in any existing statute for acquiring a right or barring a remedy, or for any other purpose, has begun to run before this code goes into effect, and the same or any limitation is prescribed in this

code, the time which has already run shall be deemed part of the time prescribed as such limitation by this code.

History: En. Sec. 9, Pol. C. 1895; re-en. Sec. 9, Rev. C. 1907; re-en. Sec. 9, R. C. M. 1921. Cal. Pol. C. Sec. 9.

Operation and Effect

The status of a case is not affected by the codes of 1895 when the statute of limitations has fully run, unless tolled, prior to the time when the codes took effect. *Wilson v. Pickering*, 28 M 435, 439, 72 P 821.

An application by an executor for the sale of real estate does not fall within the provisions of this section and other sec-

tions of the code prescribing the time within which actions may be brought to recover real estate, or the possession thereof. In *re Tuohy's Estate*, 33 M 230, 246, 83 P 486.

References

Cited or applied as section 9, Political Code, in *Guiterman v. Wishon*, 21 M 458, 459, 54 P 566.

Collateral References

Limitation of Actions—6(10).
53 C.J.S. Limitations of Actions § 4.

12-208. (17) Effect of codes on prior laws. No statute, law or rule is continued in force because it is consistent with the provisions of the codes on the same subject, but in all cases provided for by the codes all statutes, laws and rules heretofore in force in this state, whether consistent or not with the provisions of the codes, unless expressly continued in force by them, are repealed and abrogated. This repeal or abrogation does not revive any former law heretofore repealed, nor does it affect any right already existing or accrued, or any action or proceeding already taken, except as in the codes provided, nor does it affect any private statute not expressly repealed.

History: En. Sec. 17, Pol. C. 1895; re-en. Sec. 17, Rev. C. 1907; amd. Sec. 5, Ch. 4, L. 1921; re-en. Sec. 17, R. C. M. 1921. Cal. Pol. C. Sec. 18.

Operation and Effect.

This section did not repeal the whole of the compiled statutes of 1887, or of the statutes which were in force, but only such statutes as were inconsistent, or were not consistent, with the provisions of the new codes on the same subject, except where the new codes expressly continued the old statutes in force. This section could have no effect before July 1, 1895. *Dowty v. Pittwood*, 23 M 113, 116, 57 P 727.

This section does not in any sense con-

stitute a saving clause applicable to statutes generally. It is, as its very terms suggest, an emergency measure intended to prevent the abatement of pending proceedings and the loss of existing rights consequent upon the adoption of the particular codes and extends no further. *Continental Oil Co. v. Montana C. Co.*, 63 M 223, 233, 207 P 116.

References

Jorgenson v. Story et al., 78 M 477, 489, 254 P 427.

Collateral References

Statutes—167(2), 169.
82 C.J.S. Statutes §§ 293, 307.

12-209. (18) Certain statutes preserved. Nothing in this code affects any of the provisions of any special, local, or private statutes, but such statutes are recognized as continuing in force, notwithstanding the provisions of the codes, except so far as they have been repealed or affected by subsequent laws.

History: En. Sec. 18, Pol. C. 1895; re-en. Sec. 18, Rev. C. 1907; re-en. Sec. 18, R. C. M. 1921. Cal. Pol. C. Sec. 19.

Collateral References

Statutes—147, 167(2).
82 C.J.S. Statutes §§ 276, 293.

12-210. (5521) Construction of the codes with relation to laws passed. With relation to the laws passed at the session of the legislative assembly at which the political code, civil code, code of civil procedure, and penal code

are passed, such codes must be construed as though each had been passed on the last day of the session.

History: En. Sec. 5160, Pol. C. 1895; re-en. Sec. 3553, Rev. C. 1907; re-en. Sec. 5521, R. C. M. 1921. Cal. Pol. C. Sec. 4478.

NOTE.—See secs. 12-318 to 12-320.

Operation and Effect

While section 45-115 appeared in the civil code, and section 93-6001 in the code of civil procedure, both referring to the right of creditors to enforce obligations secured by lien, they must be deemed to have been passed at the same moment of time (this section), and it must be presumed that it was intended that both should be operative and each should gov-

ern as to the title in which it is found, and courts must construe them together and reconcile them, if possible. *Barth v. Ely*, 85 M 310, 322, 278 P 1002.

References

Cited or applied as section 5160, Political Code, in *Steele v. Gilpatrick*, 18 M 453, 454, 45 P 1089; *Dowty v. Pittwood*, 23 M 113, 116, 57 P 727.

Collateral References

Statutes ~~231~~.

82 C.J.S. Statutes § 385.

12-211. (5522) Construction of the codes with relation to each other.

With relation to each other, the provisions of the four codes must be construed as though all such codes had been passed at the same moment of time, and were parts of the same statute.

History: En. Sec. 5161, Pol. C. 1895; re-en. Sec. 3554, Rev. C. 1907; re-en. Sec. 5522, R. C. M. 1921. Cal. Pol. C. Sec. 4480.

NOTE.—See secs. 12-318 to 12-320.

References

Cited or applied as section 5161, Political Code, in *Steele v. Gilpatrick*, 18 M 453, 454, 45 P 1089; *State ex rel. Nissler*

v. Donlan, 32 M 256, 264, 80 P 244; as section 3554, Revised Codes, in *Brown v. Foster*, 48 M 114, 119, 135 P 993; *State v. McGraw*, 74 M 152, 158, 240 P 812; *Barth v. Ely*, 85 M 310, 322, 278 P 1002; *State v. Zorn*, 99 M 63, 67, 41 P 2d 513; *State ex rel. Walker v. Board of Commrs.*, 120 M 413, 187 P 2d 1013, 1015.

12-212. (5525) Conflicting sections of the same chapter—which to prevail. If conflicting provisions are found in different sections of the same chapter, the provisions of the section last in numerical order must prevail, unless such construction is inconsistent with the meaning of such chapter.

History: En. Sec. 5165, Pol. C. 1895; re-en. Sec. 3558, Rev. C. 1907; re-en. Sec. 5525, R. C. M. 1921. Cal. Pol. C. Sec. 4484.

Operation and Effect

Where a clause seems to have crept into the body of an act as the result of misconception or ill-advised amendment, and it cannot be given effect without violence to the clear and plain intent of the law, considered in its entirety, it must be regarded as an inadvertence, and as not militating against the legislative intent. *State ex rel. Seres v. District Court*, 19 M 501, 506, 48 P 1104; *State ex rel. Kehoe v. Stromme*, 49 M 25, 28, 139 P 1002; *State ex rel. Eagve v. Bawden*, 51 M 357, 364, 152 P 761.

The circumstance that a section of an act is the last word upon the subject is not sufficient to prevail over all other provisions of the act indicating a differ-

ent legislative intent. *State ex rel. Kehoe v. Stromme*, 49 M 25, 28, 139 P 1002.

The rule enunciated by this section, that where conflicting provisions are found in different sections of the same chapter, those of the last in numerical order must prevail, has no application where the sections were passed at different times. *State v. Zorn*, 99 M 63, 65, 41 P 2d 513.

References

Cited or applied as section 5165, Political Code, in *State ex rel. Aachen & Munich F. Ins. Co. v. Rotwitt*, 17 M 41, 49, 41 P 1004; *State v. Courtney*, 27 M 378, 384, 71 P 308; *In re Scheuer's Estate*, 31 M 606, 617, 79 P 244; *State ex rel. Nissler v. Donlan*, 32 M 256, 264, 80 P 244; *Clark v. Maher*, 34 M 391, 400, 87 P 272; as section 3558, Revised Codes, in *Morse v. Granite County*, 44 M 78, 96, 119 P 286.

12-213. (5526) Repeal of repealed statutes. The repeal of any statute or part of a statute heretofore repealed must not be so construed as a

declaration, express or by implication, that such statute or part of a statute has been in force at any time subsequent to such first repeal.

History: En. Sec. 5180, Pol. C. 1895; re-en. Sec. 3560, Rev. C. 1907; re-en. Sec. 5526, R. C. M. 1921. Cal. Pol. C. Sec. 4504.

References

Cited or applied as section 5180, Political Code, in *Dowty v. Pittwood*, 23 M 113, 117, 57 P 727; as section 3560, Revised Codes, in *State v. Bradshaw*, 53 M 96, 100, 161 P 710.

Collateral References

Statutes 232.
82 C.J.S. Statutes § 386.

Applicability of constitutional requirement that repealing or amendatory statute refer to statute repealed or amended, to repeal or amendment by implication. 5 ALR 2d 1270.

12-214. (5528) Arrangement of codes not indicative of legislative intention—annotations not part of statutes. The arrangement and classification of the several parts of said codes have been made for the purpose of convenience and orderly arrangement, and therefore no implication or presumption of a legislative construction is to be drawn therefrom, nor shall annotations be deemed any part of the statutes.

History: En. Sec. 5182, Pol. C. 1895; re-en. Sec. 3562, Rev. C. 1907; re-en. Sec. 5528, R. C. M. 1921.

Operation and Effect

The division of the codes into parts, titles, chapters, articles, and sections is a mere device for convenience, and no implication or presumption of a legislative construction is to be drawn therefrom. *Brown v. Foster*, 48 M 114, 119, 135 P 993.

References

Cited or applied as section 5182, Political Code, in *Campana v. Calderhead*, 17

M 548, 549, 44 P 83; *Chicago Title & Trust Co. v. O'Marr*, 18 M 568, 578, 46 P 809, 47 P 4; *Mutual Benefit Life Ins. Co. v. Winne*, 20 M 20, 35, 49 P 446; *Kimpton v. Jubilee Placer Co.*, 22 M 107, 108, 55 P 918; *Dowty v. Pittwood*, 23 M 113, 117, 57 P 727; *State ex rel. McGinnis v. Dickinson*, 26 M 391, 394, 68 P 468; *Stadler v. City of Helena*, 46 M 128, 132, 127 P 454; as section 3562, Revised Codes, in *State ex rel. Brandegee v. Clements*, 52 M 57, 59, 155 P 271; *State ex rel. Wooten v. District Court*, 57 M 517, 524, 189 P 233; *State v. District Court*, 61 M 558, 567, 202 P 756.

12-215. (8776) Meaning of words. Whenever the meaning of a word or phrase is defined in any part of this code, such definition is applicable to the same word or phrase wherever it occurs, except where a contrary intention plainly appears.

History: En. Sec. 4661, Civ. C. 1895; re-en. Sec. 6223, Rev. C. 1907; re-en. Sec. 8776, R. C. M. 1921. Field Civ. C. Sec. 2000.

Operation and Effect

The definition of beer in section 4-302 was applicable throughout the State Liquor Control Act (secs. 4-101 to 4-239). *Fletcher v. Paige*, 124 M 114, 220 P 2d 484, 485, 19 ALR 2d 1108.

References

Cited or applied as section 6223, Revised

Codes, in *Pittsont Copper Co. v. O'Rourke*, 49 M 281, 292, 141 P 849; *In re Trepp's Estate*, 71 M 154, 162, 227 P 1005; *State v. McGraw*, 74 M 152, 158, 240 P 812; *State ex rel. Freebourn v. Merchants' Credit Service, Inc.*, 104 M 76, 101, 66 P 2d 337; *Rieckhoff v. Woodhull et al.*, 106 M 22, 30, 75 P 2d 56.

Collateral References

Statutes 179.
82 C.J.S. Statutes § 314.

CHAPTER 3

REVISED CODES OF MONTANA 1947, CODIFICATION AUTHORIZED

- Section 12-301. Codification of existing laws of Montana authorized—court to appoint code commissioner.
- 12-302. Advisory board—appointment—duties—meetings—vacancies—oath of office.
- 12-303. Code, how cited—contents—form—arrangement—index—cross-references.
- 12-304. Historical notes.
- 12-305. Annotations.
- 12-306. Authority of commissioner and commission as to revision, arrangement and recommendations.
- 12-307. Consultation with justices of the supreme court—date fixed for completion of work.
- 12-308. Facilities furnished code commissioner and advisory commission—type, page arrangement and plan of other state codes to be examined.
- 12-309. Compensation of code commissioner and advisory board.
- 12-310. Contract for publication of codes.
- 12-311. Contract—to whom let—delivery of codes.
- 12-312. Time for performance of contract.
- 12-313. Specifications as to number of volumes, type, paper, binding, etc.
- 12-314. Publisher to supply for future demands.
- 12-315. Payment to publishers.
- 12-316. Bond of publisher.
- 12-317. Distribution of codes.
- 12-318. Elimination of separate codes from Revised Codes of Montana, 1947.
- 12-319. Effect of act.
- 12-320. Meaning of words "code" or "codes."
- 12-321. Appointment of code commissioner.
- 12-322. Appointment in case of vacancy—oath.
- 12-323. Duty of code commissioner.
- 12-324. Modifications of original act.
- 12-325. Index and tables of comparative sections.
- 12-326. References to standard legal publications.
- 12-327. Salary of code commissioner.
- 12-328. Term of office.
- 12-329. Construction of act.
- 12-330. Revised Codes of Montana 1947 adopted as law.
- 12-331. Changes in language or arrangement legalized.
- 12-332. Omissions from code—inaccuracies—effect.
- 12-333. Adoption of Replacement Volumes 3 and 4 as prima facie the laws of Montana—citation.
- 12-334. Omissions—inaccuracies—effect.

12-301. Codification of existing laws of Montana authorized—court to appoint code commissioner. The supreme court of the state of Montana is hereby authorized and directed to appoint, not later than the first day of July, 1945, a competent and qualified person as code commissioner, to compile, revise and codify and recodify all of the laws of the state of Montana of a permanent and general nature, including the Revised Codes of Montana 1935 and the session laws of the twenty-fourth, twenty-fifth, twenty-sixth, twenty-seventh, twenty-eighth, twenty-ninth and thirtieth legislative assemblies of the state of Montana, as the same may be in force and effect at the time of the final completion of said compilation and revision as herein directed, and also the session laws of any special session of the legislative assembly of the state of Montana that may have concluded its labors heretofore in the period 1935-1945 or that may be held prior to the date of said completion, including all initiative measures and all constitutional amendments adopted by the people, and all other acts and parts of acts which

have not been repealed either by the legislative assembly or by the vote of the people of Montana, or the qualified electors among them, and which have not been adjudged unconstitutional and void by the supreme court of the state of Montana.

History: En. Sec. 1, Ch. 184, L. 1945.

Effect of Revised Codes of 1935

The inclusion of a law which had been

repealed by implication in the Revised Codes of 1935 did not reenact or make such law valid. *State v. Holt*, 121 M 459, 194 P 2d 651, 657.

12-302. Advisory board—appointment—duties—meetings—vacancies—oath of office. The supreme court of Montana is further authorized and directed to appoint, not later than ten (10) days from and after the appointment of said code commissioner, and with his advice, an advisory board, to counsel, assist and with the justices of the supreme court, supervise said compilation, revision and codification, said advisory board hereby created to consist of three members of the bar of Montana, one of whom may, if possible, be a district judge, and one a member of the law faculty of the school of law of the university of Montana, who are found by the court to be competent, qualified, interested and ready to serve actively in consulting with, aiding and advising the said code commissioner in the complete and proper discharge of his duties to the end of accomplishing the revision and codification of the laws of Montana herein ordered, in the most thorough, accurate and orderly manner possible, and to produce revised codes in text and format of ready utility to the legislative assembly, the courts, legal profession, public officers, and the citizens of the state. Said advisory board shall meet in session with said code commissioner not less than four (4) times in the year 1945, and not less than four (4) times in the year 1946, each session to be of not more than twelve (12) days' duration at each of said times. In the event of vacancy in the office of code commissioner or on the advisory board, the supreme court shall appoint a successor possessing the same qualifications, and from the same group when the vacancy occurs on the advisory board. The code commissioner and the advisory board members shall subscribe and file the constitutional oath of office and organize promptly. All of said appointees may be referred to as commissioners. Said officials shall invite comments from members of the legislative assembly, the bar, and public officers of Montana, and its subdivisions as to defects to be remedied, or on other matters related to the undertaking.

History: En. Sec. 2, Ch. 184, L. 1945.

NOTE.—The advisory board was dispensed with by sec. 9, Ch. 266, Laws 1947 (sec. 12-329 of this code).

12-303. Code, how cited—contents—form—arrangement—index—cross-references. The laws to be revised, compiled and arranged by said code commissioner and advisory board shall be known and designated as the Revised Codes of Montana 1947. Said revision, compilation and codification of laws, when completed and certified to by said code commissioner and said advisory board, shall constitute the official and authorized codes of law of the state of Montana and may, for all purposes, be cited by the name "Revised Codes of Montana, 1947," or by the abbreviation "R. C. M. 1947."

The compilation of said codes shall contain an historical statement on the origin, development and relationship of the laws, compiled statutes and codes of Montana, together with a table of cases of the supreme court of

Montana dealing with the history, validity, and effect of any codification. In addition it shall also contain a copy of the magna charta, the declaration of independence, the treaty of purchase and cession of Louisiana territory, the constitution of the United States, as amended, the organic act of the territory of Montana, the enabling act, the constitution of Montana, and the laws of congress relating to the authentication of laws and records, together with the indices hereinafter required.

The commissioner, advisory board, and justices of the supreme court shall determine the form and arrangement of the codes and shall make a new, complete, thorough and accurate working index of the contents of each part or volume thereof, and, in addition, a consolidated index. The index must be alphabetically arranged, following as near as possible the standard alphabetical classification of law subject titles, and shall be carefully and thoroughly cross-indexed, and the index shall be of sufficient particularity to refer clearly to the subject matter of each section contained in such codes and the general laws. Ample cross-references shall also be supplied but shall not be used to eliminate detailed direct indexing.

History: En. Sec. 3, Ch. 184, L. 1945. modified by secs. 4 and 5, Ch. 266, Laws

NOTE.—Requirements of this section 1947 (secs. 12-324 and 12-325 of this code). and the three following sections were

12-304. Historical notes. It shall be the duty of the code commissioner and said advisory board to include in the Revised Codes of Montana 1947, under each section, a note clearly printed, showing original date of enactment of said section and its complete legislative history; and the said revisors may use all the historical notes which now appear in the Revised Codes of Montana 1935, and which are shown to be true, and to supplement the same. References to comparable sections of the codes of California from which said sections are taken shall show the original section of the California codes applicable and, also, the comparable section under the latest official revision of the codes and laws of the state of California.

The compilation shall also contain tables of special, private or local laws relating to subjects other than claims and a table of acts of congress relating, specifically to the state of Montana, its territory, streams and domain, and a table of any law or laws of the state found to have been omitted from any prior codification, and believed to be in force.

History: En. Sec. 4, Ch. 184, L. 1945. **NOTE.**—See note to sec. 12-303.

12-305. Annotations. Said codes shall be annotated so as to show by a proper and appropriate reference all the decisions of the supreme court of Montana, construing, commenting upon or in any way referring to the sections of the constitution of the United States, the constitution of Montana and the sections of said codes and the general laws of Montana, up through the 30th day of June 1947, and said annotations shall appear in chronological order and clearly show the year of the said decisions of the supreme court; and the said annotations shall also include the decisions under any other statute or statutes similar to the section under which annotations are made. Such annotations shall contain the names of the plaintiffs and defendants, the number of the volume and page of the report containing such decisions in the Montana reports or other reports and also a brief but clear statement of the holding of the case, with particular reference to the

particular section of the codes, laws or constitutions. So far as possible, the code commissioner shall include appropriate references to the opinions of the attorney general which construe or apply provisions of the law. The index volume shall also contain a table of parallel section numbers for the Revised Codes of 1895, 1907, 1921, 1935 and 1947, and a table of session laws covering all sessions of the assembly from 1895 to date, and a table showing the number, date and duration of sitting and place of sitting of each territorial legislature and of each legislative assembly, for Montana.

History: En. Sec. 5, Ch. 184, L. 1945.

NOTE.—See note to sec. 12-303.

12-306. Authority of commissioner and commission as to revision, arrangement and recommendations. In compiling said codification and revision of the laws of Montana hereby authorized, the said commissioner, advisory board and justices shall have authority to determine the form and arrangement of the codes, to rearrange the parts, chapters and sections thereof, and to make appropriate and descriptive designations, numbers and titles for such parts, chapters and sections.

The commissioners shall note all inconsistencies, ambiguities, omissions, contradictions and imperfections in the several sections of the codes and shall prepare new sections for the purpose of correcting and reconciling all inconsistencies, ambiguities, omissions, contradictions and imperfections, and shall submit such proposed new sections by way of bills to be introduced during the thirtieth legislative assembly, and also make such other and further proposals by way of prepared bills, as the said commissioners shall deem necessary, proper, or advisable, including proposals for new matter, or changes in the law, or adopting of new laws, including laws prepared by the commissioners, or uniform laws prepared by the commissioners on uniform laws. The commissioners shall submit a printed report of their work, together with recommendations to the justices of the supreme court, the governor, and the members-elect of the thirtieth legislative assembly before December 15, 1946.

The commissioners shall have authority to correct the spelling, punctuation and grammatical construction, wherever required by good literary practice. The commissioners shall have authority to paragraph the material in code sections, in accordance with the rules of paragraphing and in order to make more easily readable, sections now appearing in solid, consecutive type lineage. This act shall not be construed as giving the said commissioner and the said advisory board the power or authority to change, modify or make any law or laws, but only as giving power and authority to complete a full revision and compilation of the laws of the state of Montana, and to make the recommendations herein provided.

History: En. Sec. 6, Ch. 184, L. 1945.

NOTE.—See note to sec. 12-303.

12-307. Consultation with justices of the supreme court—date fixed for completion of work. The commissioner and the advisory board shall at all times consult the justices of the supreme court of Montana and make available to said justices their plan of work, the progress of the work, proposed changes where permitted hereby, plan of arrangement and section numbering of the codes, indexing, number of volumes and proposals for publication of the volumes and binding thereof.

The code commissioner and the said advisory board shall complete the entire work required by this act and possible of completion by December 31, 1946, on such date. Any work necessarily to be performed after such date, and to include the laws passed and approved during the thirtieth legislative assembly or any special session of the assembly during the two-year period 1945 and 1946, shall be the subject of legislation by the thirtieth legislative assembly, but the appointment of the code commissioner and the advisory board shall continue until and throughout the final completion and publication of the codes under such further terms as the thirtieth legislative assembly shall prescribe.

History: En. Sec. 7, Ch. 184, L. 1945.

12-308. Facilities furnished code commissioner and advisory commission—type, page arrangement and plan of other state codes to be examined. The secretary of state of the state of Montana shall furnish to the code commissioner and the advisory commission, without charge, four (4) sets each of the Revised Codes of 1895, the Revised Codes of 1907, the Revised Codes of 1921, and of the Revised Codes of 1935, and four (4) sets of all the session laws of the state of Montana, bound or unbound, and two (2) sets, bound, or unbound, of the Montana reports. The state board of examiners shall furnish the code commissioner and said advisory commission with adequate and well-equipped offices for their work adjacent to the state law library, and said commissioners shall have unobstructed access to the state law library, and the books and records of the office of secretary of state which may be necessary or convenient to the prosecution of the work. The said commissioners shall also be provided with the necessary paper, stationery and cards, typewriters, and dictating equipment, filing cases, cabinets and boxes, as shall be necessary, provided that all thereof shall remain the property of the state of Montana and shall be returned to the state board of examiners upon completion of the work. The commissioners shall have power to employ such clerical and stenographic assistance as may be necessary.

The code commissioner and the advisory board shall make careful examination of the codes of several states with a view to selecting type, page arrangement and plan, indexing and outlining, binding of volumes, size and convenience of handling volumes, which shall result in the best possible production of codes for Montana.

History: En. Sec. 8, Ch. 184, L. 1945.

12-309. Compensation of code commissioner and advisory board. The code commissioner shall be paid for the performance of the work herein specified with the sum of five thousand (\$5,000.00) dollars for each of the years 1945 and 1946, and said payments shall be made monthly and prorated from the time of the appointment of the commissioner until the payment on December 31, 1946. The members of the advisory commission shall be paid a per diem of twenty-five (\$25.00) dollars per day plus the necessary and reasonable travel, hotel and other expenses directly incidental to the performance of their duties, and their claims therefor shall be paid through the state board of examiners, on approval by the chief justice of the supreme

court of Montana, or, in his absence, any justice of said court, as presented from time to time.

History: En. Sec. 9, Ch. 184, L. 1945.

12-310. Contract for publication of codes. As soon as the code commissioner and advisory board created by sections 12-301 to 12-309, shall have completed the codification of the Revised Codes of Montana of 1947, and the copy of same is ready for the printer, the state purchasing agent shall call for bids for the printing and binding of said codes, and the state board of examiners is hereby authorized to contract for the printing, binding and delivery thereof. Said contract shall be advertised and let in the same manner provided by law for the letting of contracts for said printing.

History: En. Sec. 1, Ch. 43, L. 1947.

12-311. Contract—to whom let—delivery of codes. The state board of examiners shall contract for the publication of said work on the terms most expeditious and advantageous to the state. The contract shall specify that a definite number of sets of said code shall be printed and delivered to the secretary of state of the state of Montana, for the purpose of distribution as hereinafter provided. The board may exercise its discretion as to the number of sets of said code which shall be printed and delivered to the state, taking into consideration the cost and necessity for the same. Provided, however, that the contract shall not call for more than one thousand sets of said code.

History: En. Sec. 2, Ch. 43, L. 1947.

12-312. Time for performance of contract. The state board of examiners shall fix the time to be allowed for the completion of the work, and the performance of said work within the time so fixed shall constitute a part of the terms of the contract.

History: En. Sec. 3, Ch. 43, L. 1947.

12-313. Specifications as to number of volumes, type, paper, binding, etc. The code commissioner and advisory board hereinbefore referred to shall, after conference of approval by the justices of the supreme court, designate the number of volumes into which said code shall be divided, the style and size of type to be used, the quality of paper and binding and any other specifications necessary to insure the efficient performance of the printing contract.

History: En. Sec. 4, Ch. 43, L. 1947.

12-314. Publisher to supply for future demands. The contract shall require the publisher to keep on hand for sale at a reasonable price to be fixed by the state board of examiners, a sufficient number of copies of said codes to supply all demands for the same for private use in the state of Montana for a period of ten years, and also to supply all future demands of the state of Montana for the same period.

History: En. Sec. 5, Ch. 43, L. 1947.

12-315. Payment to publishers. Whenever the secretary of state of the state of Montana shall issue his certificate that he has received all of the codes, printed and bound in accordance with said contract, the state auditor is hereby directed to draw his warrant in favor of the publishers of said

code for the amount of money due under the said contract, and the state treasurer is hereby authorized to pay said warrant out of any moneys in his hands appropriated for said purpose by the legislature. The state board of examiners is also hereby authorized in its discretion to advance to the publishers of said work partial payments upon said contract during the progress of the work, whenever in its judgment the making of such advance is necessary and proper to promote the progress of said publication. All payments of expenses incident to the publication and distribution, not made to the publisher, shall be made as authorized and directed by the state board of examiners.

History: En. Sec. 6, Ch. 43, L. 1947.

12-316. Bond of publisher. The publisher to whom said contract is awarded must execute to the state of Montana a good and sufficient bond to be approved by the state board of examiners in the sum of ten thousand dollars (\$10,000) conditioned for the faithful performance of said contract.

History: En. Sec. 7, Ch. 43, L. 1947.

12-317. Distribution of codes. The secretary of state, upon receipt of said published codes, shall distribute the same, or so many of them as may be necessary, in the following manner, to wit:

To each department of the state government of Montana, one (1) copy.

To the code commissioner and each member of the legislative assembly, one (1) copy upon the payment to the state of Montana by the code commissioner and by any member of the legislature receiving such copy, the actual cost price thereof to the state; provided further, that any member of the legislature desiring a copy must make application during his term of office and not more than one (1) copy shall be distributed to each member.

To the state law library, two (2) copies.

To the library of congress, two (2) copies.

To the state historical and miscellaneous library, one (1) copy.

To the state law librarian, for the purpose of exchanges with libraries, universities and other institutions, such number of copies, not to exceed one hundred (100) as may be required by him.

To each of the component institutions of the university of Montana, one (1) copy.

To each of the United States district judges for the district of Montana, and to each of the judges of the supreme and district courts of Montana, one (1) copy.

To the county clerk of each county, three (3) copies for the use of the various county officials.

To each county attorney, and to each clerk of the district court, one (1) copy.

The secretary of state may further distribute the Revised Codes of Montana of 1947, at his discretion, to other departments of government not herein enumerated when the same are deemed absolutely necessary, and may exchange new sets for worn out sets when the latter are returned to his office. The copies of said codes distributed under the provisions of this section, shall remain the property of the state or county office or department to which they are delivered; provided, however, that copies of the code

purchased by the code commissioner or by any member of the legislative assembly of Montana shall become the personal property of the person or persons paying the cost thereof to the state.

History: En. Sec. 8, Ch. 43, L. 1947;
amd. Sec. 1, Ch. 75, L. 1951.

12-318. Elimination of separate codes from Revised Codes of Montana, 1947. On and after the date when the Revised Codes of Montana, 1947, are compiled and certified by the code commissioner and advisory board as required by section 12-303, the four separate codes of law of the state of Montana now designated in the Revised Codes of Montana of 1935 as the "political code," "civil code," "code of civil procedure" and "penal code" and all acts amendatory thereof or supplemental thereto, shall no longer comprise separate and distinct codes of law, nor shall they be cited or designated as such, but the same shall constitute a single unified and continuous body of law to be known and cited as the "Revised Codes of Montana, 1947," or by the abbreviation "R. C. M. 1947" and by the titles and section numbers into which said code shall be arranged by the code commissioner and advisory board.

History: En. Sec. 1, Ch. 50, L. 1947.

12-319. Effect of act. The merger and consolidation of said four codes into one, as provided in this act, shall in no manner change, diminish or affect any right, obligation or duty existing at the time said merger and consolidation become effective. The Revised Codes of Montana of 1935 and all acts amendatory thereof and supplemental thereto, shall continue in full force and effect until the Revised Codes of Montana, 1947, are compiled and certified as provided by this act or by any subsequent act of the legislative assembly.

History: En. Sec. 2, Ch. 50, L. 1947.

12-320. Meaning of words "code" or "codes." When used in any statute or law of Montana which has been or may hereafter be transferred and incorporated into the "Revised Codes of Montana, 1947," the word or words "code," "codes," "this code," "the code," or "the codes" shall be deemed and construed to have reference to the entire body of law of Montana, both civil and criminal, save only in those instances where it appears from their context and history, that said word or words were originally intended to have reference only to the penal code of Montana as enacted in 1895, or to acts amendatory thereof or supplementary thereto, in which case said word or words shall be construed accordingly.

History: En. Sec. 3, Ch. 50, L. 1947.

12-321. Appointment of code commissioner. The supreme court of the state of Montana is hereby authorized and directed, not later than thirty (30) days after the passage and approval of this act, to appoint a competent and qualified person as code commissioner of Montana, who shall perform the duties imposed on him by this act, subject to the general supervision of the justices of the supreme court.

History: En. Sec. 1, Ch. 266, L. 1947.

12-322. Appointment in case of vacancy—oath. In the event of a vacancy in the office of code commissioner the supreme court shall appoint

a successor possessing the same qualifications. The code commissioner shall subscribe and file the constitutional oath of office.

History: En. Sec. 2, Ch. 266, L. 1947.

12-323. Duty of code commissioner. It shall be the duty of the code commissioner to complete the codification and proof reading of the Revised Codes of Montana of 1947 now in process of preparation, in accordance with the requirements of sections 12-301 to 12-309 as modified by this act.

History: En. Sec. 3, Ch. 266, L. 1947.

12-324. Modifications of original act. The following modifications in the requirements of sections 12-301 to 12-309 are hereby made and the code commissioner is hereby authorized to eliminate from the Revised Codes of Montana of 1947 the following matters now specified in said sections:

(a) An historical statement and table of cases dealing with the history, validity and effect of codification.

(b) The re-examination of historical notes in the 1935 codes and the addition of references to comparable California sections.

(c) The preparation of tables of special, private or local laws relating to subjects other than claims, and a table of acts of congress relating specifically to the state of Montana, its territory, streams and domain and a table of any law or laws of the state found to have been omitted from any prior codification and believed to be in force.

(d) References to the opinions of the attorney general except in those cases where the attorney general has held an act unconstitutional or no longer operative.

(e) The noting of all inconsistencies, ambiguities, omissions, contradictions and imperfections in the several sections of the codes and the preparation of new sections for the purpose of correcting and reconciling the same, together with proposals for adoption of new laws including laws prepared by commissioners on uniform laws. That in lieu of the requirements specified in this sub-section the code commissioner shall be required to submit only the laws already prepared by the present commissioner and advisory board created by section 12-302 and which are referred to in their report to this legislative assembly.

(f) The inclusion of the treaty of purchase and cessation of the Louisiana territory.

History: En. Sec. 4, Ch. 266, L. 1947.

12-325. Index and tables of comparative sections. The requirements for separate indexes for each volume of the code is hereby modified to require only the preparation of a complete general index which, together with the tables of comparative sections, contained in the 1935 code and a table of comparative sections of the 1935 and 1947 codes and the session laws since 1937, shall constitute a single volume.

History: En. Sec. 5, Ch. 266, L. 1947.

12-326. References to standard legal publications. The commissioner is hereby authorized to insert in the new code references to standard legal publications provided that such references can be procured without expense to the state.

History: En. Sec. 6, Ch. 266, L. 1947.

12-327. Salary of code commissioner. The code commissioner shall be paid for the performance of his duties a monthly salary of four hundred (\$400.00) dollars, payable monthly.

History: En. Sec. 7, Ch. 266, L. 1947.

12-328. Term of office. The term of office of the code commissioner shall extend from the date of his appointment until the completion of the Revised Codes of Montana of 1947, including the proof reading thereof, but not later than December 31, 1948.

History: En. Sec. 8, Ch. 266, L. 1947.

12-329. Construction of act. It is hereby declared that this act shall not amend or make any changes in or modifications of said sections 12-301 to 12-309, except the specific changes and modifications contained in this act and except also that the powers and duties of the code commissioner and advisory board appointed under the provisions of said sections shall cease upon the appointment of the code commissioner provided for by this act.

History: En. Sec. 9, Ch. 266, L. 1947.

NOTE.—Part of this section which relates to appropriation of money is omitted.

12-330. Revised Codes of Montana 1947 adopted as law. The Revised Codes of Montana, 1947, in nine volumes as compiled, numbered and arranged by the code commissioners appointed by authority of sections 12-301 to 12-309 and sections 12-321 to 12-329, and as certified to by said code commissioners are hereby, as to both form and substance, approved, legalized and adopted as the laws of Montana now in force and effect and the same are hereby declared to constitute the laws of Montana now in force and effect except such laws as may be adopted by the thirty-second session of said legislative assembly and except such laws as were adopted by the thirty-first session of said legislative assembly.

History: En. Sec. 1, Ch. 4, L. 1951.

Collateral References

Legislative adoption of compiled or re-

vised statutes as giving effect to former repealed or suspended revisions included therein. 12 ALR 2d 423.

12-331. Changes in language or arrangement legalized. All changes made by said code commissioners in the language or arrangement of any law of the state now embodied in said codes and all additions of new sections made by said commissioners to said code, are hereby legalized, approved and given validity.

History: En. Sec. 2, Ch. 4, L. 1951.

12-332. Omissions from code—inaccuracies—effect. Nothing herein contained shall be deemed as invalidating or in any manner affecting the legality of any act or thing heretofore or hereafter done by authority of any enactment which is not included in said Revised Codes of Montana, 1947; and nothing herein contained shall affect the existence, validity, or enforcement of any act, enactment, or title thereof, statute, or code section, omitted from, or erroneously, or inaccurately set forth in said revision.

History: En. Sec. 3, Ch. 4, L. 1951.

12-333. Adoption of Replacement Volumes 3 and 4 as prima facie the laws of Montana—citation. Replacement Volumes Number 3 and Number 4 of the Revised Codes of Montana of 1947, as published by the pub-

lishers and distributors of said Revised Codes of Montana of 1947, are hereby, as to both form and substance, approved, legalized and adopted as prima facie the laws of Montana now in force and effect with respect to the titles and subjects covered thereby. The sections of said replacement volumes may be cited as sections of the Revised Codes of Montana of 1947 without reference to the session laws which enacted new matter or to the session laws which have amended the sections of the Revised Codes of Montana of 1947, as included in the original compilation of the Revised Codes of Montana of 1947.

History: En. Sec. 1, Ch. 8, L. 1955.

12-334. Omissions — inaccuracies — effect. Nothing herein contained shall be deemed as invalidating or in any manner affecting the legality of any act or thing heretofore or hereafter done by authority of any enactment which is not included in said replacement volumes and nothing herein contained shall affect the existence, validity, or enforcement of any act, enactment, or title thereof, statute, or code section, omitted from, or erroneously, or incorrectly set forth in said replacement volumes.

History: En. Sec. 2, Ch. 8, L. 1955.

CHAPTER 4

COMMISSION ON UNIFORM STATE LAWS

- Section 12-401. Appointment of commission on uniform state laws.
12-402. Appointments to fill vacancies.
12-403. Meeting and organization.
12-404. Duties of commissioners.

12-401. Appointment of commission on uniform state laws. A commission is hereby created to be known as the commission on uniform state laws which shall consist of three (3) recognized members of the bar, or members of the faculty of the law school of the state university of Montana, who shall be appointed by the governor for terms of four years each, or until their successors are appointed, and in addition thereto any residents of this state who because of long service in the cause of the uniformity of state legislation shall have been elected life members of the national conference of commissioners on uniform state laws.

History: En. Sec. 1, Ch. 175, L. 1945.

12-402. Appointments to fill vacancies. Upon the death, resignation, failure or refusal to serve of any appointed commissioner, his office becomes vacant; and the governor shall make an appointment to fill the vacancy, such appointment to be for the unexpired term of the former appointee.

History: En. Sec. 2, Ch. 175, L. 1945.

12-403. Meeting and organization. The commissioners shall meet at least once in two years and shall organize by the election of one of their number as chairman and another as secretary, who shall hold their respective offices for a term of two years and until their successors are elected.

History: En. Sec. 3, Ch. 175, L. 1945.

12-404. Duties of commissioners. Each commissioner shall attend the meeting of the National conference of commissioners on uniform state laws, and both in and out of such national conference shall do all in his power to promote uniformity in state laws, upon all subjects where uniformity may be deemed desirable and practicable; said commission shall report to the legislature at each regular session, and from time to time thereafter as said commission may deem proper, an account of its transactions, and its advice and recommendations for legislation. It shall also be the duty of said commission to bring about as far as practicable the uniform judicial interpretation of all uniform laws.

History: En. Sec. 4, Ch. 175, L. 1945.

TITLE 13

CONTRACTS

- Chapter 1. Definition and essentials of contract, 13-101, 13-102.
2. Parties to contract, 13-201 to 13-204.
3. Consent, 13-301 to 13-325.
4. Object, 13-401 to 13-405.
5. Consideration, 13-501 to 13-511.
6. Creation of contracts—oral and written, 13-601 to 13-612.
7. Interpretation of contracts, 13-701 to 13-727.
8. Unlawful contracts, 13-801 to 13-811.
9. Extinction of contracts—rescission—alteration—cancellation, 13-901 to 13-910.
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CHAPTER 1

DEFINITION AND ESSENTIALS OF CONTRACT

- Section 13-101. Contract defined.
13-102. Essential elements of contract.

13-101. (7467) Contract defined. A contract is an agreement to do or not to do a certain thing.

History: En. Sec. 2090, Civ. C. 1895; re-en. Sec. 4965, Rev. C. 1907; re-en. Sec. 7467, R. C. M. 1921. Cal. Civ. C. Sec. 1549. Field Civ. C. Sec. 744.

Cross-Reference

Conditional sales contracts, sec. 74-201 et seq.

A Contract is a Voluntary Obligation

The terms "contracts" and "engagements" have much the same meaning, the latter being sometimes defined as quasi contracts; each denotes a voluntarily assumed obligation (citing this section), and does not include torts. Capital Nat. Bank v. Bartley et al., 101 M 591, 596, 56 P 2d 728.

Allegation of Contract

Complaint alleging that defendants agreed to sell for a specified consideration and that plaintiffs agreed to purchase, together with other averments in the complaint, contained a sufficient allegation of a contract. Johnson v. Elliot, 123 M 597, 218 P 2d 703, 706.

Letter as Contract

A letter signed by contractor and written to owner of property stating the maximum cost of the construction of a house for purpose of permitting the owner to obtain a G. I. loan, constituted a contract.

Higby v. Hooper, 124 M 331, 221 P 2d 1043, 1051.

Operation and Effect

This section contains nothing more than the common-law definition of the term contract, and is manifestly intended to apply only to those obligations which arise immediately out of dealings between the parties, and not to that sort of contract which arises remotely out of the compact of government. Oppenheimer v. Regan, 32 M 110, 116, 79 P 695.

Where one has received money which, though not bound to do so by express contract, he in equity and good conscience ought to turn over to him from whom he received it, the law implies a promise on his part to that effect, and the obligation, thus created or implied by law, is termed a "quasi contract," as distinguished from a contract as defined in this and the following section. Schaeffer v. Miller, 41 M 417, 420, 109 P 970.

References

Stagg v. Stagg, 80 M 180, 186, 300 P 539.

Collateral References

Contracts—1.
17 C.J.S. Contracts § 1.
12 Am. Jur. 496, Contracts, § 2.

13-102. (7468) Essential elements of contract. It is essential to the existence of a contract that there should be:

1. Parties capable of contracting;
2. Their consent;
3. A lawful object; and
4. A sufficient cause or consideration.

History: En. Sec. 2091, Civ. C. 1895; re-en. Sec. 4966, Rev. C. 1907; re-en. Sec. 7468, R. C. M. 1921. Cal. Civ. C. Sec. 1550. Field Civ. C. Sec. 745.

Failure of Consideration

Under a share-cropper agreement, under which the plaintiff allowed defendant to go upon his land and farm it in return for a share in the crops that were grown, the consideration going from the plaintiff to the defendant tenant was the right whereby he was permitted to go upon the farm and farm it. When the plaintiff lost his lease upon the land, the contract terminated, because the existence of such consideration was essential to the existence of the contract and written agreement. *White v. Saby*, 127 M 241, 260 P 2d 1116, 1118.

Operation and Effect

To constitute a bilateral agreement, the parties must have given their free and voluntary assent to the terms, which is a question of fact. *Babcock v. Engel*, 58 M 597, 605, 194 P 137.

It is axiomatic that a person cannot contract with himself. There must be the meeting of two separate and independent minds, at least two parties to a contract, and each must be competent. *Petroleum Co. v. G. Campbell-Kevin Synd.*, 75 M 261, 269, 242 P 540.

While consideration is an essential element of a valid contract, the contract here

involved is a negotiable instrument, which is deemed prima facie to have been issued for a valuable consideration, and to which the signer is deemed to have become a party for value. *Alley v. Butte & Western Min. Co.*, 77 M 477, 486, 251 P 517.

An implied contract is one the terms and existence of which are manifested by the conduct of the parties; the element of consideration for such a contract is furnished by the benefit conferred upon the promisor and the prejudice suffered by the promisee, and the element of intention on the part of the former may be furnished by his conduct and declarations. *Rentfro et al. v. Dettwiler*, 95 M 391, 398, 26 P 2d 992.

References

Cited or applied as section 2091, Civil Code, in *Oppenheimer v. Regan*, 31 M 110, 116, 79 P 695; as section 4966, Revised Codes, in *Schaeffer v. Miller*, 41 M 417, 420, 109 P 970; *Butler v. Peters*, 62 M 381, 386, 205 P 247; *Baltimore Process Co. v. Red Lodge B. Co.*, 66 M 407, 409, 213 P 798; *Newer v. First Nat. Bank of Harlem*, 74 M 549, 554, 241 P 613; *Stagg v. Stagg*, 90 M 180, 186, 300 P 539; *Stevens v. Steck et al.*, 101 M 569, 576, 55 P 2d 7.

Collateral References

Contracts—1.
17 C.J.S. Contracts § 1.
12 Am. Jur. 509, Contracts, §§ 12 et seq.

CHAPTER 2

PARTIES TO CONTRACT

- Section 13-201. Who may contract.
13-202. Minors and persons of unsound mind, capacity to contract.
13-203. Identification of parties necessary.
13-204. When contract for benefit of third person may be enforced.

13-201. (7469) Who may contract. All persons are capable of contracting, except minors, persons of unsound mind, and persons deprived of civil rights.

History: En. Sec. 2100, Civ. C. 1895; re-en. Sec. 4967, Rev. C. 1907; re-en. Sec. 7469, R. C. M. 1921. Cal. Civ. C. Sec. 1556. Field Civ. C. Sec. 746.

Cross-Reference

Married women's rights, sec. 36-130.

References

Murphy v. La Chapelle, 95 M 36, 38, 24 P 2d 131.

Collateral References

Contracts—11 and other particular topics.

17 C.J.S. Contracts § 27.

12 Am. Jur. Contracts, p. 514, §§ 16-18; p. 1004, §§ 427-429.

13-202. (7470) Minors and persons of unsound mind, capacity to contract. Minors and persons of unsound mind have only such capacity as is defined by sections 64-101 to 64-114 of this code.

History: En. Sec. 2101, Civ. C. 1895; re-en. Sec. 4968, Rev. C. 1907; re-en. Sec. 7470, R. C. M. 1921. Cal. Civ. C. Sec. 1557. Field Civ. C. Sec. 747.

Collateral References

Infants↔46; Mental Health↔372.
43 C.J.S. Infants § 71; 44 C.J.S. Insane Persons § 108.

Cross-Reference

Minor veterans, disability removed, sec. 77-1101.

13-203. (7471) Identification of parties necessary. It is essential to the validity of a contract not only that the parties should exist, but that it should be possible to identify them.

History: En. Sec. 2102, Civ. C. 1895; re-en. Sec. 4969, Rev. C. 1907; re-en. Sec. 7471, R. C. M. 1921. Cal. Civ. C. Sec. 1558. Field Civ. C. Sec. 748.

Collateral References

Contracts↔33 and other particular topics.
17 C.J.S. Contracts § 57.

References

Stevens v. Steck et al., 101 M 569, 576, 55 P 2d 7.

13-204. (7472) When contract for benefit of third person may be enforced. A contract, made expressly for the benefit of a third person, may be enforced by him at any time before the parties thereto rescind it.

History: En. Sec. 2103, Civ. C. 1895; re-en. Sec. 4970, Rev. C. 1907; re-en. Sec. 7472, R. C. M. 1921. Cal. Civ. C. Sec. 1559. Field Civ. C. Sec. 749.

Contracts for Hospitalization Under Workmen's Compensation Act

A contract made pursuant to the workmen's compensation act for supplying hospital, medical and surgical care to all employees assenting thereto (see secs. 92-610 and 92-706) is one made for the benefit of third persons, the employees, who, upon its acceptance by them, become entitled to enforce it in accordance with its terms under this section. Kelly v. Montana Power Co., 111 M 118, 121, 106 P 2d 339.

Operation and Effect

The executory contract made expressly for the benefit of a third person must be one whereby the promisor undertakes to pay or discharge some debt or duty which the promisee owes to the third person. McDonald v. American Nat. Bank, 25 M 456, 495, 65 P 896; Tatem v. Eglanol Mining Co., 45 M 367, 373, 123 P 28.

Plaintiffs were not entitled to enforce a contract for the payment of the balance of the purchase price as a contract made for their benefit, since this section does not apply to executory contracts without consideration. McDonald v. American Nat. Bank, 25 M 456, 495, 65 P 896.

To entitle a person not a party to a contract between two others to recover thereunder, the contract must, under this section, have been made expressly for his benefit, the fact that it may incidentally benefit him being insufficient to bring him within the terms of this section. Martin v. American Surety Co. et al., 74 M 43, 48, 238 P 877; Conley v. United States Fidelity etc. Co., 98 M 31, 37 P 2d 565.

Where the state highway commission requires a road construction contractor to promise in the contract awarded to him that he will pay laborers and materialmen, and the surety on his bond for the faithful performance of the work agrees to pay persons furnishing material and labor if the contractor fails to do so, laborers and materialmen may sue the surety directly in their own names as on a contract made for their benefit, as third parties, under this section; it being otherwise where the contract is silent as to paying such claims, though the surety promises to pay them, the bond in that regard then being unenforceable because not supported by a consideration. Gary Hay & Grain Co., Inc. v. Carlson, 79 M 111, 122, 123, 255 P 722.

Under this section, providing that "a contract made expressly for the benefit of a third person may be enforced by him at any time before the parties thereto rescind it," as construed by the supreme court of the state, which construction is binding

on the federal courts, a contract to come within the scope of the statute must be one where the promisor undertakes to pay or discharge some debt or duty which the promisee owes to the third person, and where no consideration passes from the third person, but the provision for his benefit is voluntary on the part of the promisee, he cannot maintain an action for its enforcement. *McNaught v. Hoffman*, 274 Fed 918.

In action against surety on robbery and burglary policy issued to county treasurer to recover for loss of county moneys and securities stolen from treasurer, county was proper, though not necessary, party plaintiff, where surety agreed to pay assured for loss sustained by assured or by owner, and county paid premiums on policy and was owner of property stolen, and this section and section 93-2801, entitling treasurer to prosecute action alone, did not make such action mandatory or exclusive. *National Surety Co. v. Sheridan County*, 33 F 2d 473.

Decision on former appeal holding materialman not entitled to recover under highway contractor's bond obligating contractor to furnish labor and material at his own expense should be adhered to on second appeal, though decision was based on construction of state law (this section), and intermediate decision of state supreme court held that materialman could recover under the statute, permitting enforcement by third person of contract made expressly for his benefit, where contract there involved contained promise of contractor to pay for labor and material used; agreement of contractor to furnish labor and material at his own expense not being expressly for benefit of materialman, since "express" means made known distinctly and explicitly, and not left to inference (citing *Words and Phrases*, Second Series, "Express"). *Minneapolis Steel & Machinery Co. v. Federal Surety Co.*, 34 F 2d 270.

State court judgments for surety on contractor's bond in actions for labor and material furnished held judicial estoppels against action in federal court on same claims by irrigation district for which work was done; state supreme court's decision that complaint states no cause of action against surety under this section meaning that bond afforded no protection to laborers and materialmen, not merely that they could not sue thereon in their own names. *Cove Irr. Dist. v. American Surety Co.*, 35 F 2d 933.

Statutory action by laborers and materialmen against surety on contractor's bond held distinct from obligee's action for benefit of laborers and materialmen, and therefore former decision is not res judicata (this section, and section 93-2801). *Cove Irr. Dist. v. American Surety Co. of New York*, 42 F 2d 957.

Surety on state highway contractor's bond held not liable to pay unsatisfied judgment against contractor and in favor of driver of automobile which hit culvert along highway under construction, notwithstanding contractor's failure to maintain danger and warning signs as required by contract. *National Surety Co. of New York v. Ulmen*, 68 F 2d 330. See also 3 F Supp 348; 4 F Supp 194.

Id. Stranger to highway contract or bond securing performance thereof cannot recover against surety even though referred to in contract or bond, in absence of specific promise to pay such third person.

Id. Mere statement of duties to be discharged by highway contractor which may incidentally benefit third party or class to which latter belongs, without more, does not make surety liable to third person for contractor's failure to discharge duty.

The party for whose benefit the contract is made must be named or otherwise sufficiently described or designated. However, if the contract was made expressly for the benefit of a class of persons to which class the party seeking enforcement belongs, he may obtain the benefit of it. *Conley v. United States Fidelity etc. Co.*, 98 M 31, 40, 37 P 2d 565.

Sufficiency of Complaint

To entitle a third person to enforce a contract made between two others, under this section, the complaint must show that it was expressly made for his benefit, or for the benefit of a class of persons to which he belongs, i. e., he, or they, either must be named therein or otherwise sufficiently described or designated; the fact that the contract may incidentally benefit him or them, being insufficient. *McKeever et al. v. Oregon Mtg. Co., Ltd.*, 60 M 270, 274, 198 P 752.

Id. The complaint in an action by the vendors of land to recover the balance of the purchase price from a mortgage company which loaned the money to the vendee, setting forth the mortgage contract and alleging that the company had arranged with one of plaintiffs to hold the balance due until patent for the land should be received and recorded and then pay it directly to her, held insufficient, under the rule above, in the absence of an averment that the contract contained a provision that the mortgage was made expressly for the benefit of plaintiffs or either of them.

Where Plaintiff Was Not the Benefited Party

Where the manager of a motor car company fraudulently filled in a conditional sales contract signed by a customer in blank, the manager and company were liable on the fraud; but, when the manager afterward sold his interest in the company

to another under an agreement stating that such other should not be responsible for obligations of the company "due to outsiders," the latter contract was not made for the benefit of the defrauded customer so as to enable him to maintain suit against the buyer of the manager's interest to recover what he paid the finance company to release his conditional sales contract. *Koontz v. Sharon*, 109 M 180, 182, 94 P 2d 668.

References

Cited or applied as section 2103, Civil

Code, in *Western Loan & S. Co. v. S. B. A. Co.*, 31 M 448, 450, 78 P 774; *Lanstrum et al. v. Zumwalt et al.*, 73 M 502, 237 P 205; *H. Earl Clack Co. v. Staunton et al.*, 100 M 26, 29, 44 P 2d 1069.

Collateral References

Contracts—187 and other particular topics.

17 C.J.S. Contracts § 519.

12 Am. Jur. 821, Contracts, §§ 274-294.

CHAPTER 3

CONSENT

- Section 13-301. Essentials of consent.
 13-302. Consent—when voidable.
 13-303. Apparent consent—when not free.
 13-304. When deemed to have been obtained by fraud, etc.
 13-305. Duress—in what it consists.
 13-306. Menace—in what it consists.
 13-307. Fraud, actual or constructive.
 13-308. Actual fraud, acts constituting.
 13-309. Constructive fraud.
 13-310. Actual fraud a question of fact.
 13-311. Undue influence—in what it consists.
 13-312. Mistake, kinds of.
 13-313. Mistake of fact.
 13-314. Mistake of law.
 13-315. Mistake of foreign laws.
 13-316. Mutuality of consent.
 13-317. Communication of consent.
 13-318. Mode of communicating acceptance of proposal.
 13-319. When communication deemed complete.
 13-320. Acceptance by performance of conditions.
 13-321. Acceptance must be absolute.
 13-322. Revocation of proposal.
 13-323. Revocation—how made.
 13-324. Ratification of contract void for want of consent.
 13-325. Assumption of obligation by acceptance of benefits.

13-301. (7473) Essentials of consent. The consent of the parties to a contract must be:

1. Free;
2. Mutual; and,
3. Communicated by each to the other.

History: En. Sec. 2110, Civ. C. 1895; re-en. Sec. 4971, Rev. C. 1907; re-en. Sec. 7473, R. C. M. 1921. Cal. Civ. C. Sec. 1565. Field Civ. C. Sec. 750.

Operation and Effect

Under this section, the consent of a party to a contract must be free; it is not free when obtained through menace (sec. 13-303), and under section 13-306, a threat of unlawful confinement of the person threatened constitutes menace. *Clifford v. Great Falls Gas Co.*, 68 M 300, 305, 216 P 1114.

Though, under this section, the mutual consent of the parties to a contract is an essential element thereof, where a written agreement is susceptible of but one meaning, a misconception thereof by one of the parties, not authorized by the language used, does not affect the contract. *J. Neils Lumber Co. v. Farmers Lumber Co.*, 88 M 392, 396, 293 P 288.

References

Cited or applied as section 4971, Revised Codes, in *Babcock v. Engel*, 58 M 597, 605, 194 P 137; *Averill Machinery Co. v. Tay-*

lor et al., 70 M 70, 77, 223 P 918; Hicks v. Stillwater County, 84 M 38, 49, 274 P 296; Pederson v. Thoeny et al., 88 M 569, 575, 295 P 250; Stevens v. Steck et al., 101 M 569, 576, 55 P 2d 7.

Collateral References

Contracts—16 and other particular topics.

17 C.J.S. Contracts § 34.

12 Am. Jur. 515, Contracts, §§ 19 et seq.

13-302. (7474) Consent—when voidable. A consent which is not free is nevertheless not absolutely void, but may be rescinded by the parties in the manner prescribed by the chapter on rescission.

History: En. Sec. 2111, Civ. C. 1895; re-en. Sec. 4972, Rev. C. 1907; re-en. Sec. 7474, R. C. M. 1921. Cal. Civ. C. Sec. 1566. Field Civ. C. Sec. 751.

References

Cited or applied as section 4972, Revised Codes, in Turk v. Rudman, 42 M 1, 16, 111 P 739; Carey v. McFatridge, 115 M 278, 292, 142 P 2d 329.

13-303. (7475) Apparent consent—when not free. An apparent consent is not real or free when obtained through:

1. Duress;
2. Menace;
3. Fraud;
4. Undue influence; or,
5. Mistake.

History: En. Sec. 2112, Civ. C. 1895; re-en. Sec. 4973, Rev. C. 1907; re-en. Sec. 7475, R. C. M. 1921. Cal. Civ. C. Sec. 1567. Field Civ. C. Sec. 752.

Operation and Effect

The defense of duress is based upon the proposition that the consent of the party to the contract over whom it was exercised was not free. Bullard v. Smith, 28 M 387, 403, 72 P 761.

Under section 13-301, the consent of a party to a contract must be free; it is not free when obtained through menace, and under section 13-306, a threat of unlawful confinement of the person threatened constitutes menace. Clifford v. Great Falls Gas Co., 68 M 300, 305, 216 P 1114.

References

Cited or applied as section 4973, Revised Codes, in Brundy v. Canby, 50 M 454, 472, 148 P 315; Averill Machinery Co. v. Taylor et al., 70 M 70, 77, 223 P 918; Hicks v. Stillwater County, 84 M 38, 49, 274 P 296; Pederson v. Thoeny et al., 88 M 569, 575, 295 P 250; Rieckhoff v. Woodhull et al., 106 M 22, 31, 75 P 2d 56; Carey, State Treasurer v. McFatridge, 115 M 278, 292, 142 P 2d 329.

Collateral References

12 Am. Jur. 618, Contracts, §§ 124-148.

13-304. (7476) When deemed to have been obtained by fraud, etc. Consent is deemed to have been obtained through one of the causes mentioned in the last section only when it would not have been given had such cause not existed.

History: En. Sec. 2113, Civ. C. 1895; re-en. Sec. 4974, Rev. C. 1907; re-en. Sec. 7476, R. C. M. 1921. Cal. Civ. C. Sec. 1568. Field Civ. C. Sec. 753.

17 C.J.S. Contracts § 163.

12 Am. Jur. 636, Contracts, §§ 143-146; 23 Am. Jur. 747, Fraud and Deceit, generally.

Collateral References

Contracts—94(5) and other particular topics.

13-305. (7477) Duress—in what it consists. Duress consists in:

1. Unlawful confinement of the person of the party, or of the husband or wife of such party, or of an ancestor, descendant, or adopted child of such party, husband, or wife;
2. Unlawful detention of the property of any such person; or,

3. Confinement of such person, lawful in form, but fraudulently obtained, or fraudulently made unjustly harassing or oppressive.

History: En. Sec. 2114, Civ. C. 1895; re-en. Sec. 4975, Rev. C. 1907; re-en. Sec. 7477, R. C. M. 1921. Cal. Civ. C. Sec. 1569. Field Civ. C. Sec. 754.

Operation and Effect

Evidence considered, and held insufficient to sustain a jury finding that a note sued on was executed under duress. Bullard v. Smith, 28 M 387, 403, 72 P 761.

Threats to enforce payment of promissory notes, in the manner provided in a contract of sale in case of non-payment, do not constitute duress. Ott v. Pace, 43 M 82, 91, 115 P 37.

To threaten to do only those things which a person has a legal right to do under an existing contract does not constitute duress; nor may a charge of duress be based on mere vexation and annoyance, mere pecuniary distress or a refusal to

surrender property on which one has a lien. Pederson v. Thoeny et al., 88 M 569, 575, 295 P 250.

References

Cited or applied as section 4975, Revised Codes, in De Forrest v. Crane & Ordway Co., 55 M 489, 499, 178 P 291; Anderson v. McClenathan, 62 M 387, 393, 205 P 230; Clifford v. Great Falls Gas Co., 68 M 300, 305, 216 P 1114; Averill Machinery Co. v. Taylor et al., 70 M 70, 77, 223 P 918.

Collateral References

Contracts 95 and other particular topics.

17 C.J.S. Contracts § 168.

12 Am. Jur. 639, Contracts, § 147; 17 Am. Jur. 871, Duress and Undue Influence, generally.

13-306. (7478) Menace—in what it consists. Menace consists in a threat:

1. Of such duress as is specified in subdivisions 1 and 3 of the last section;

2. Of unlawful and violent injury to the person or property of any such person, as is specified in the last section; or,

3. Of injury to the character of any such person.

History: En. Sec. 2115, Civ. C. 1895; re-en. Sec. 4976, Rev. C. 1907; re-en. Sec. 7478, R. C. M. 1921. Cal. Civ. C. Sec. 1570. Field Civ. C. Sec. 755.

Operation and Effect

Held, that where plaintiff's testimony in his action to recover \$200 claimed to have been obtained from him by defendant gas company by the use of threats, showed that he had surreptitiously used gas without the same having first passed through the gas-meter, that defendant's manager upon discovery of that fact had threatened him that unless he paid the amount above mentioned he would send him to the penitentiary, and that thereupon to avoid prosecution or being sent to prison he made payment, contending, however, that he had used only \$10 worth, a motion for nonsuit was improperly granted, since the testimony would have justified a finding that the threats were made for an unlawful purpose—the collection of a debt, and that the acts of defendant's manager constituted a menace under this section. Clifford v. Great Falls Gas Co., 68 M 300, 306, 216 P 1114.

A threat to send one to the penitentiary for an alleged crime unless he execute a promissory note and a mortgage securing it constitutes menace, and renders the instruments thereupon executed void, since the element of consent freely given, indispensable to a valid contract, is absent in such a case. Averill Machinery Co. v. Taylor et al., 70 M 70, 78, 223 P 918.

Id. A threat to prosecute one for a crime of which he is not guilty constitutes menace.

To threaten to do only those things which a person has a legal right to do under an existing contract does not constitute duress; nor may a charge of duress be based on mere vexation and annoyance, mere pecuniary distress or a refusal to surrender property on which one has a lien. Pederson v. Thoeny et al., 88 M 569, 576, 295 P 250.

References

Cited or applied as section 2115, Civil Code, in Bullard v. Smith, 28 M 387, 403, 72 P 761; as section 4976, Revised Codes, in De Forrest v. Crane & Ordway Co., 55 M 489, 499, 178 P 291.

13-307. (7479) Fraud, actual or constructive. Fraud is either actual or constructive.

History: En. Sec. 2116, Civ. C. 1895; re-en. Sec. 4977, Rev. C. 1907; re-en. Sec.

7479, R. C. M. 1921. Cal. Civ. C. Sec. 1571. Field Civ. C. Sec. 756.

References

Courtney v. Gordon, 74 M 408, 418, 241 P 233; Steinbrenner v. Elder, 80 M 395, 400, 260 P 725.

Collateral References

Contracts 94 and other particular topics; Fraud 1-7.
17 C.J.S. Contracts § 154 et seq.; 37 C.J.S. Fraud § 1.

13-308. (7480) Actual fraud, acts constituting. Actual fraud, within the meaning of this chapter, consists in any of the following acts, committed by a party to the contract, or with his connivance with intent to deceive another party thereto, or to induce him to enter into the contract:

1. The suggestion, as a fact, of that which is not true, by one who does not believe it to be true;
2. The positive assertion, in a manner not warranted by the information of the person making it, of that which is not true, though he believes it to be true;
3. The suppression of that which is true, by one having knowledge or belief of the fact;
4. A promise made without any intention of performing it; or,
5. Any other act fitted to deceive.

History: En. Sec. 2117, Civ. C. 1895; re-en. Sec. 4978, Rev. C. 1907; re-en. Sec. 7480, R. C. M. 1921. Cal. Civ. C. Sec. 1572. Field Civ. C. Sec. 757.

Burden of Proof

One who relies on fraudulent representations to defeat an action on a promissory note given for the purpose of chattels has the burden of proving that the statements were the inducing cause for signing the note; that they were material and false; that the speaker had knowledge of their falsity or was ignorant of their truth and intended that they should be accepted and acted upon; that the defendant was ignorant of their falsity and rightfully relied upon their truth, not having equal means of knowing the truth or opportunity to examine the property, and that his damage proximately resulted from the representations. *Advance-Rumely T. Co., Inc. v. Wenholz*, 80 M 82, 93 et seq., 258 P 1085.

In an action for damages for fraud, brought under subdivision 4 of this section, the complaint in which charged that defendant induced plaintiff to buy corporate stock under the promise, made without any intention of keeping it, that if the stock was not worth a certain sum within six years, he would return to him the purchase price, plaintiff had the burden of proving, *inter alia*, that defendant made the promise and that, when he made it, he had no intention of performing it, under the rule that a party plaintiff must prove every material allegation of his complaint, *Cuckovich v. Buckovich*, 82 M 1, 5, 264 P 930.

Id. The law presumes good faith and that when one, charged with making a fraudulent promise, made it, intended to perform it; it never presumes fraud, but

the burden of proving fraud is on the party alleging it.

Defense of Caveat Emptor

Where it appears in an action for fraud that plaintiff had investigated or had the means at hand to investigate the truth of an alleged false representation, his reliance upon it affords no ground for complaint. *Lee v. Stockmen's Nat. Bank et al.*, 63 M 262, 283, 207 P 623.

Id. Under the above rules, held that a judgment of nonsuit was properly entered in an action against a bank for damages claimed to have been suffered by plaintiff in reliance upon alleged fraudulent representations made to him by its cashier that mortgages held by it on automobiles handled by a dealer were in full force, had not been paid, etc., whereas in fact the bank had authorized the mortgagor to sell, and who had sold them, paying the proceeds into the bank, and on the strength of which statements plaintiff had bought the mortgages, where it appeared from plaintiff's evidence that he was a director of the bank and a member of its discount committee, with knowledge of the course of business pursued between the bank and the mortgagor with relation to the automobiles, had himself indorsed the mortgagor's notes secured by mortgaged cars which were sold by the latter notwithstanding the mortgage, etc., it appearing therefrom that any damage he suffered was not traceable to the alleged false representations but to his failure to exercise the care imposed by the rule of caveat emptor.

Where a purchaser of land caused an examination of the title thereto be made and could have ascertained an alleged defect in it, his reliance upon false repre-

representations made with relation thereto by the vendor's attorney was not a defense to an action to foreclose a mortgage for failure to pay balance of the purchase price. *Morehouse v. Northern Land Co.*, 68 M 96, 102, 216 P 792.

Where a party who claims to have been deceived to his prejudice by false representations had the means at hand to ascertain whether the statements made were true or not but failed to do so, his reliance upon the representations, however false, afford him no ground of complaint. *Helena Adjustment Co. v. Claffin*, 75 M 317, 324, 243 P 1063.

Effect on Parties Defrauding

A trust cannot result in one of two persons for the benefit of the other, if they intended and agreed to obtain land from the government unlawfully and fraudulently; and the court, in such a case, in a suit between themselves as to the land, will leave the parties where it finds them. *Keely v. Gregg*, 33 M 216, 255, 83 P 222.

Essential Elements

To make out a prima facie case of fraud sufficient to go to the jury, the plaintiff must show a false representation by defendant, its materiality and defendant's knowledge of its falsity or ignorance of its truth, his intent that it should be acted upon by plaintiff in the manner reasonably contemplated, his reliance upon its truth, his right to rely thereon, and his consequent and proximate injury. *Lee v. Stockmen's Nat. Bank et al.*, 63 M 262, 283, 207 P 623.

The elements of actual fraud in a contract of sale are: a false representation, its materiality, the seller's knowledge of its falsity or ignorance of its truth, his intent that it should be acted upon by the buyer, the latter's ignorance of its falsity, reliance upon its truth and his consequent and proximate injury, and where the injured party had made out a prima facie case embracing such elements, it is error to direct a verdict for his opponent, the question whether or not there has been fraud generally being a question of fact for the jury. *Healy v. Ginoff et al.*, 69 M 116, 124, 220 P 539.

A party asserting fraud in the execution of a contract (mortgage), to make out a prima facie case, must show a false representation, its materiality, the speaker's knowledge of its falsity or his ignorance of the truth, his intent that it should be acted upon by the party claiming to have been defrauded, the latter's ignorance of its falsity, his reliance on its truth, his right to rely thereon, and his consequent and proximate injury. *Morigeau v. Lozar*, 81 M 434, 440, 263 P 985.

Fraud as an Answer

Where, in a suit to foreclose a purchase-money mortgage, the answer sets up fraud by the plaintiff in inducing the defendant to enter into the transaction, and avers, in describing the fraud, particulars coming within the statutory definition of fraud, it is error for the court to strike such averments from the answer. *Como Orchard Land Co. v. Markham*, 54 M 438, 445, 171 P 274.

Fraud Defined

Fraud, in its generic sense, especially as used in courts of equity, comprises all acts, omissions and concealments involving a legal or equitable duty which result in damages to another; it is any cunning or artifice used to cheat or deceive another. *Bullard v. Zimmerman et al.*, 82 M 434, 440, 268 P 512.

Fraud is a Question of Fact

In an action based on fraud, the question whether actual fraud has been practiced is one of fact, and the burden of proof is upon him who alleges it. *Lee v. Stockmen's Nat. Bank et al.*, 63 M 262, 283, 207 P 623.

Indefinite Promise

Where plaintiff invested funds in mining operations of defendant, defendant's indefinite promise that "they were going to form a corporation as soon as possible" without setting any time or date for doing so was insufficient to establish fraud where corporation was not formed four months later. *Marlin v. Drury*, 124 M 576, 228 P 2d 803.

Laches

One charged with fraud in causing numbers of inside city lots to be inserted in the deed, whereas the purchaser intended to buy and the vender agreed to sell corner lots, will not be heard to defend on the ground of laches because of plaintiff's failure to consult the abstract of title for some two years, where the evidence showed that immediately after discovering the fraud defendant assured plaintiff that she would "fix it." *Campana v. Dobry*, 69 M 240, 244, 221 P 540.

Where one claiming to have been defrauded, with full knowledge of the facts relating to the transaction, waits for five years before making complaint and until the time when he is called upon to meet the obligation incurred, he will be held to have ratified it even though, in the first instance, he was induced to execute the instrument in question by his creditor's fraudulent representations. *Morigeau v. Lozar*, 81 M 434, 440, 263 P 985.

Measure of Damages

Where a purchaser of land was aware

after the first year of his occupancy that the representations by the seller as to the amount of water available for irrigation by reason of which he lost the first year's crop were false, his recovery of damages was limited to the amount represented by the loss of that crop, and he could not claim damages based upon four successive failures thereafter, he having planted the crops with knowledge that water could not be obtained for irrigation. *Healy v. Gin-off et al.*, 69 M 116, 124, 220 P 539.

Id. The measure of damages for fraud in inducing the purchase of farm lands is the difference between their actual value at the date of sale and the contract price.

Promise Must Be Made Without the Intent to Perform

Where a married man, by a promise made to his dangerously sick wife, to devise both his own and her property to their daughter and son, induces her to convey her property to him, instead of to the daughter as she proposes, he intending at the time either to repudiate the promise afterward, or to do as he pleases with the property after once getting it into his hands, there is actual fraud in his act from its inception. *Huffine v. Lincoln*, 52 M 585, 593, 160 P 820.

The mere making of a promise which the promisor fails to keep does not constitute actionable fraud, intention not to keep it when it was made being necessary to constitute the promisor's action fraudulent, under this section. *International Harvester Co. v. Merry*, 60 M 498, 505, 199 P 704.

When a promise was made in good faith at the time when made, there is no fraud, though the promisor subsequently changes his mind and fails to perform. *Cuckovich v. Buckovich*, 82 M 1, 5, 264 P 930.

One charging fraud by reason of making a promise without any intention of performing it, must prove that the maker of it had no such intention when he made it, the mere showing that it was not performed being insufficient to prove fraud. *Howe v. Messimer*, 84 M 304, 313, 275 P 281.

Sufficiency of Complaint Charging Fraud

The representations made by a landowner to an intended purchaser as to the boundaries of his property were, in effect, warranties, the owner being presumed to know its location; and where, after the consummation of a sale, the statements of the vendor in this regard proved false, the result was a fraud within the meaning of this section, whether made in good or bad faith, and the vendee had the right to rescind or sue for damages. *Post v. Liberty*, 45 M 1, 14, 121 P 475.

Id. An owner of land is supposed to know its boundaries, and his vendee has

a right to rely upon his representations as to them; such representations are regarded as those of fact, and, if false, the effect of them is to deceive the intending purchaser.

In an action for damages for fraud charged by plaintiff to have been practiced upon him in the sale of land, the plaintiff made out his case where the evidence showed that the defendant, acting in collusion with a civil engineer who had been employed by plaintiff to survey the land, falsely represented to him that the tract contained a much larger acreage suitable for fruit growing than was actually embraced in it. *Shoudy v. Reeser*, 48 M 579, 587, 142 P 205.

False representation that an investment company would be ready for business within two months, made to induce the sale of stock, was a fraud. *Buhler v. Loftus*, 53 M 546, 558, 165 P 601.

Representations made to a stockholder in a company by a broker that one hundred shares of its capital stock had been turned back into its treasury by a subscriber unable to pay therefor, and soliciting plaintiff to buy it "to help the company out," related to a material matter within the meaning of this section. *Stillwell v. Rankin*, 55 M 130, 136, 174 P 186.

Allegations in an action to rescind a contract for the sale of city lots on the ground of fraud perpetrated by the vendor in procuring the scrivener to insert in the deed numbers of inside lots instead of corner lots intended to be bought, held sufficient to charge actual fraud. *Campana v. Dobry*, 69 M 240, 244, 221 P 540.

Where defendant in an action to recover the purchase price of personal property in his answer pleaded that the representation of plaintiff that he had title to the property was false, but did not allege that plaintiff knew it to be false, that it was made in a manner not warranted by the information possessed by the seller, that it was made with intent to deceive, that the buyer believed it to be true or relied upon it, that he was deceived by it and misled to his prejudice, the pleading was insufficient to warrant rescission of the contract on the ground of fraud. *Courtney v. Gordon*, 74 M 408, 418, 241 P 233.

Proof of inadequacy of value of land as security for indebtedness against it is not alone sufficient to prove fraud, either actual or constructive. *Duffy et al. v. Hastings et al.*, 78 M 22, 33, 252 P 316.

An alleged fraudulent representation by vendor that a lot was worth in excess of and would readily sell for more than a given amount, was insufficient to charge fraud in the absence of the further averments that he did not believe the statement to be true, or knew it to be false, or was not warranted by the information he then had and of a showing of facts that

the complaining purchaser had a right to rely upon the representation, and in the absence of the further averment that the lot was not worth what the vendor said it was. *Howe v. Messimer*, 84 M 304, 313, 275 P 281.

The bare statement in the complaint of landowner of fraudulent representations (which were not of existing facts but no more than promises) was insufficient to allege fraud in procuring mineral lease; failure to allege that defendants had no intention of performing their promises rendered the pleading ineffectual. *Hodgkiss v. Northland Petroleum Consolidated*, 104 M 328, 336, 57 P 2d 811.

References

Cited or applied as section 2117, Civil Code, in *Sathre v. Rolfe*, 31 M 85, 88, 77 P 431; as section 4978, Revised Codes, in

Turk v. Rudman, 42 M 1, 15, 111 P 739; *Post v. Liberty*, 45 M 1, 16, 121 P 475; *Emerson-Brantingham I. Co. v. Anderson*, 58 M 617, 626, 194 P 160; *Steinbrenner v. Elder*, 80 M 395, 400, 260 P 725; *Morton v. Union Central Life Ins. Co.*, 80 M 593, 612, 261 P 278.

Collateral References

Contracts 94; *Fraud* 3.
17 C.J.S. *Contracts* § 153 et seq.; 37 C.J.S. *Fraud* § 3.
23 Am. Jur. 726, *Fraud and Deceit*, § 4.

Contracting party's right of redress for fraud as affected by his own breach of the contract before discovering the fraud. 13 ALR 2d 1248.

False representations as to income, profits, or productivity of property as fraud. 27 ALR 2d 14.

13-309. (7481) **Constructive fraud.** Constructive fraud consists:

1. In any breach of duty which, without an actually fraudulent intent, gains an advantage to the person in fault, or anyone claiming under him, by misleading another to his prejudice, or to the prejudice of anyone claiming under him; or,

2. In any such act or omission as the law especially declares to be fraudulent, without respect to actual fraud.

History: En. Sec. 2118, Civ. C. 1895; re-en. Sec. 4979, Rev. C. 1907; re-en. Sec. 7481, R. C. M. 1921. Cal. Civ. C. Sec. 1573. Field Civ. C. Sec. 758.

Operation and Effect

Proof of inadequacy of value of land as security for indebtedness against it is not alone sufficient to prove fraud, either ac-

tual or constructive. *Duffy et al. v. Hastings et al.*, 78 M 22, 33, 252 P 316.

References

Courtney v. Gordon, 74 M 408, 418, 241 P 233; *Steinbrenner v. Elder*, 80 M 395, 400, 260 P 725; *Morton v. Union Central Life Ins. Co.*, 80 M 593, 612, 261 P 278.

13-310. (7482) **Actual fraud a question of fact.** Actual fraud is always a question of fact.

History: En. Sec. 2119, Civ. C. 1895; re-en. Sec. 4980, Rev. C. 1907; re-en. Sec. 7482, R. C. M. 1921. Cal. Civ. C. Sec. 1574. Field Civ. C. Sec. 759.

Burden of Proof

Where the plaintiff charged actual fraud on the part of the defendant, the burden of establishing such fact was on plaintiff. *Hjermstad v. Barkuloo*, ___ M ___, 270 P 2d 1112, 1118.

Operation and Effect

Whether an applicant for life insurance intentionally concealed facts which are material, or made false representations with reference to them, intending to deceive the insurer, thus being guilty of actual fraud, was a question of fact for the jury. *Pelican v. Mutual Life Ins. Co.*, 44 M 277, 288, 119 P 778.

Where the facts in an action for fraud are not controverted and furnish the basis

of but one inference, namely, that the defendant is guilty of the fraud alleged, the court may infer the fraud as a matter of law and direct a verdict in favor of plaintiff. *Shoudy v. Reeser*, 48 M 579, 587, 142 P 205.

The question of fraud is always a question of fact for the jury, unless the evidence is uncontradicted and it is impossible to draw any inference from it other than that it entered into the particular transaction, whereupon it becomes one of law for the court. *Williams v. Mutual Life Ins. Co. of N. Y.*, 61 M 66, 72, 201 P 320.

In an action based on fraud, the question whether actual fraud has been practiced is one of fact, and the burden of proof is upon him who alleges it. *Lee v. Stockmen's Nat. Bank et al.*, 63 M 262, 284, 207 P 623.

Actual fraud is always a question of fact to be established by competent evidence,

since fraud cannot be presumed. *Harrison v. Riddell et al.*, 64 M 466, 478, 210 P 460.

Donald v. Northern Benefit Association, 113 M 595, 607, 131 P 2d 479.

References

Cited or applied as section 4980, Revised Codes, in *Turk v. Rudman*, 42 M 1, 16, 111 P 739; *Advance-Rumely T. Co., Inc. v. Wenholz*, 80 M 82, 94, 258 P 1085; *Mc-*

Collateral References

Contracts 100; *Fraud* 64 and other particular topics.

17 C.J.S. *Contracts* § 614; 37 C.J.S. *Fraud* § 123.

13-311. (7483) Undue influence—in what it consists. Undue influence consists:

1. In the use, by one in whom a confidence is reposed by another, or who holds a real or apparent authority over him, of such confidence or authority for the purpose of obtaining an unfair advantage over him;
2. In taking an unfair advantage of another's weakness of mind; or,
3. In taking a grossly oppressive and unfair advantage of another's necessities or distress.

History: En. Sec. 2120, Civ. C. 1895; re-en. Sec. 4981, Rev. C. 1907; re-en. Sec. 7483, R. C. M. 1921. Cal. Civ. C. Sec. 1575. Field Civ. C. Sec. 760.

Demands and Importunities May Amount to Undue Influence

Demands and importunities may amount to undue influence, without being coupled with fraud, threats, or misrepresentation; whether they do or not depending upon what they were, how persistently and under what circumstances they were employed, and whether the mind of the testator was so infirm as to be overpowered by them. *Murphy v. Nett*, 47 M 38, 53, 130 P 451.

Relationship of Parties

To meet the requirement of this definition, the one party to the negotiations must occupy a superior position with reference to the other by reason of a real or apparent authority he holds over him, arising out of pre-existing relations, or assumes at the time because of the weakness of mind or distress or necessities of the other, by reason of which he knowingly gains an advantage, which in contemplation of law is unconscionable. *Emerson-Brantingham I. Co. v. Anderson*, 58 M 617, 629, 194 P 160.

The burden of proving undue influence upon testator in making his will is upon the contestant, and in order to establish it as a fact it must be shown by proof that it was exercised upon the mind of the testator directly to procure its execution, mere suspicion that by reason of the close relation between the testator and the beneficiary, the latter may have had opportunity to ingratiate himself in the former's favor and thus exercise influence over him, being insufficient. *Hale v. Smith*, 73 M 481, 486, 237 P 214.

Sufficiency of Evidence to Support Undue Influence

Facts sufficient to be submitted to the jury, upon the question of "undue influence" in the making of a will. In re *Murphy's Estate*, 43 M 353, 371, 116 P 1004.

Evidence in an action to set aside a will on the ground of undue influence alleged to have been exercised by a testator's niece, who was made the principal beneficiary under the will, who for the last nine years of the life of deceased had cared for him and whom he had treated as his own daughter, held to show an entire absence of proof of undue influence, and therefore insufficient to warrant its setting aside on that ground. *Hale v. Smith*, 73 M 481, 486, 237 P 214.

Sufficiency of Pleading

Answer in an action on a promissory note stating facts that defendant was afflicted with a diseased and a resultant weak mind; that he reposed special confidence in plaintiff (his brother) and that the latter, taking advantage of this confidence, unduly influenced defendant to make the note, held sufficient to constitute a plea of undue influence, under this section. *Stagg v. Stagg*, 96 M 573, 590, 32 P 2d 856.

Theory

The theory underlying the doctrine of undue influence is that the testator is induced by the means employed, to execute an instrument in form and appearance his will, but in reality expressing testamentary dispositions which he would not have voluntarily made. *Murphy v. Nett*, 47 M 38, 51, 130 P 451.

What Constitutes

Undue influence, sufficient to invalidate

a will, must be such as to control the mental operations of the testator, overcome his power of resistance and thus cause him to adopt the will of another in the disposition of his property which he would not have made if left freely to act in accordance with his own pleasure. *Hale v. Smith*, 73 M 481, 486, 237 P 214.

Held, further, that under the conditions set forth, there not having been any fiduciary relations existing between mortgagor and mortgagee, it on the contrary appearing that they dealt at arm's length, each being represented by counsel when the mortgage was executed, there was no undue influence exerted toward securing its execution, within the meaning of subdi-

vision 1 of this section, defining "undue influence" as abuse of a confidence or authority, reposed in one, for the purpose of obtaining an unfair advantage over another. *Pederson v. Thoeny et al.*, 88 M 569, 575, 295 P 250.

References

Davenport v. Townsend, 117 M 75, 79, 157 P 2d 477.

Collateral References

Contracts—96.

17 C.J.S. Contracts § 180.

12 Am. Jur. 640, Contracts, § 148; 17 Am. Jur. 906, Duress and Undue Influence, §§ 32-44.

13-312. (7484) Mistake, kinds of.

History: En. Sec. 2121, Civ. C. 1895; re-en. Sec. 4982, Rev. C. 1907; re-en. Sec. 7484, R. C. M. 1921. Cal. Civ. C. Sec. 1576. Field Civ. C. Sec. 761.

References

Cited or applied as section 4982, Revised Codes, in *Brundy v. Canby*, 50 M 454, 472, 148 P 315; *Hicks v. Stillwater County*, 84 M 38, 49, 274 P 296; *Rieckhoff v. Wood-*

Mistake may be either of fact or law.

hull et al., 106 M 22, 31, 75 P 2d 56; *Carey v. McFatridge*, 115 M 278, 292, 142 P 2d 329.

Collateral References

Contracts—93 and other particular topics.

17 C.J.S. Contracts § 134 et seq.

12 Am. Jur. 618, Contracts, §§ 125-142.

13-313. (7485) Mistake of fact. Mistake of fact is a mistake not caused by the neglect of a legal duty on the part of the person making the mistake, and consisting in:

1. An unconscious ignorance or forgetfulness of a fact, past or present, material to the contract; or,

2. Belief in the present existence of a thing material to the contract, which does not exist, or in the past existence of such a thing, which has not existed.

History: En. Sec. 2122, Civ. C. 1895; re-en. Sec. 4983, Rev. C. 1907; re-en. Sec. 7485, R. C. M. 1921. Cal. Civ. C. Sec. 1577. Field Civ. C. Sec. 762.

Failure to Read Instrument Before Signing

Where defendant, who directed an attorney to draft a quitclaim deed to certain property, and who, without reading the instrument, though able to read, signed it, he was not entitled to relief in an action for damages for a breach of warranty contained in the instrument, which proved to be not a quitclaim but a warranty deed. *Hennessy v. Holmes*, 46 M 89, 93, 125 P 132. See *Parchen v. Chessman*, 49 M 326, 339, 142 P 631; *Cox v. Hall*, 54 M 154, 162, 168 P 519.

Failing to read carefully a written instrument before uttering the same is neglect of a legal duty, from the consequences of which the person guilty of such negligence cannot have relief. *Hennessy*

v. Holmes, 46 M 89, 94, 125 P 132. See *Parchen v. Chessman*, 49 M 326, 339, 142 P 631; *Cox v. Hall*, 54 M 154, 162, 168 P 519.

One is guilty of negligence in failing to read a promissory note before signing it. *Parchen v. Chessman*, 49 M 326, 338, 142 P 631.

How Construed

Sections 13-706 and 93-401-13 are to be construed with this section, in determining the right to redress for mistakes in written instruments; under this section, freedom from negligence is the condition precedent to the right to such redress. *Hennessy v. Holmes*, 46 M 89, 96, 125 P 132.

Reformation of Instruments Because of Mistakes

Before equity will intervene to correct an alleged mutual mistake in a written instrument, the evidence of the mistake must

be clear, convincing and satisfactory. *Humble v. St. John et al.*, 72 M 519, 522, 234 P 475.

References

Hinerman v. Baldwin et al., 67 M 417,

215 P 1103; *Reickhoff v. Woodhull et al.*, 106 M 22, 31, 75 P 2d 56; *Calkins v. Smith*, 106 M 453, 458, 78 P 2d 74.

Collateral References

12 Am. Jur. 618, Contracts, §§ 126 et seq.

13-314. (7486) Mistake of law. Mistake of law constitutes a mistake, within the meaning of this chapter, only when it arises from:

1. A misapprehension of the law by all parties, all supposing that they knew and understood it, and all making substantially the same mistake as to the law; or,

2. A misapprehension of the law by one party, of which the others are aware at the time of contracting, but which they do not rectify.

History: En. Sec. 2123, Civ. C. 1895; re-en. Sec. 4984, Rev. C. 1907; re-en. Sec. 7486, R. C. M. 1921. Cal. Civ. C. Sec. 1578. Field Civ. C. Sec. 763.

As Affecting Contract Obligations

Every person is charged with knowledge of the law, and generally speaking a mistake of law is not an adequate ground for relieving one from a contract obligation, more especially so where the mistake was not mutual, but the party relying thereon not only knew of his legal rights and asserted them, but nevertheless agreed to monthly settlements for several years, constituting accounts stated, accepting less than he was legally entitled to; under such conditions he may not thereafter be permitted to surcharge the accounts and recover the difference. *Norum v. Ohio Oil Co. et al.*, 83 M 353, 365, 272 P 534.

Bank Unlawfully Pledging Note to County

Prior to amendment of the national banking act of 1930, national banks were prohibited from pledging any of their assets to secure deposits; hence where in 1924 a depositor executed his note to a bank which unlawfully pledged it to a county as security for its funds then on deposit in the bank, which soon thereafter became insolvent, the county was without right to enforce payment of the note because it was not the owner nor rightful holder thereof. The receiver's sending the dividend check for funds of the depositor, to the county treasurer was immaterial because a mistake. *McFarland v. Stillwater County*, 109 M 544, 549, 98 P 2d 321.

Sufficiency of Complaint Based on Mistake of Law

Where plaintiff in a suit to recover an overpayment made on a repurchase of property sold under foreclosure, under a mistake of law, induced by defendant, alleges a cause of action under subdivision 2 of this section, and the proof adduced brings it within subdivision 1, there is a fatal variance, and recovery cannot be had

by reason of a mistake of law. *Bottego v. Carroll*, 31 M 122, 126, 77 P 430. See *Brundy v. Canby*, 50 M 454, 470, 148 P 315.

Where a fraud is alleged in the alternative in an action for the reformation of one and the cancellation of another instrument because executed under the influence of mutual mistake, it does not render the plea of mutual mistake ineffective. *Brundy v. Canby*, 50 M 454, 470, 148 P 315.

Under the code provisions declaring that to constitute a contract the consent of the parties must be free, that it is not free if obtained through mistake of law or fact and defining a mistake of law as a misapprehension of the law by both parties, held that the complaint of a county surveyor in an action to recover from the county the difference between seven dollars and eight dollars per day compensation during four years of service, on the ground that owing to the mutual mistake of himself and the board of county commissioners he was allowed and accepted the smaller amount whereas under the law he was entitled to the larger one, stated a cause of action (as against the assertion that mistake of what the law allowed him was not a proper basis for relief) it being apparent from an inspection of various statutes relating to the compensation of the county surveyor that there was ample justification for laymen, such as plaintiff and the board, to fall into the mutual mistake as to the amount he was entitled by law to receive. *Hicks v. Stillwater County*, 84 M 38, 50, 274 P 296.

References

Cited or applied as section 2123, Civil Code, in *Sathre v. Rolfe*, 31 M 85, 88, 77 P 431; *Reickhoff v. Woodhull et al.*, 106 M 22, 31, 75 P 2d 56; *Calkins v. Smith*, 106 M 453, 458, 78 P 2d 74; *Carey v. McFartridge*, 115 M 278, 292, 142 P 2d 329.

Collateral References

Contracts—93(4).

17 C.J.S. Contracts § 145.

12 Am. Jur. 633, Contracts, §§ 140-142.

13-315. (7487) Mistake of foreign laws. Mistake of foreign laws is a mistake of fact.

History: En. Sec. 2124, Civ. C. 1895; re-en. Sec. 4985, Rev. C. 1907; re-en. Sec. 7487, R. C. M. 1921. Cal. Civ. C. Sec. 1579. Field Civ. C. Sec. 764.

Where Rule Held Not Available

The rule of this section that mistakes of foreign law are mistakes of fact was not available to nonresident bringing foreclosure proceedings in Montana through a local attorney, where he failed to advise attorney of a payment that kept the debt

alive in the belief the law here was the same as in his state, and attorney entered into an agreed statement of facts upon the trial of which the court found that the debt was outlawed. *Rieckhoff v. Woodhull et al.*, 106 M 22, 30, 75 P 2d 56.

Collateral References

Contracts⁹³(1, 4).
17 C.J.S. Contracts §§ 134, 145.
12 Am. Jur. 636, Contracts, § 142.

13-316. (7488) Mutuality of consent. Consent is not mutual, unless the parties all agree upon the same thing in the same sense. But in certain cases defined by the chapter on interpretation, they are to be deemed so to agree without regard to the fact.

History: En. Sec. 2125, Civ. C. 1895; re-en. Sec. 4986, Rev. C. 1907; re-en. Sec. 7488, R. C. M. 1921. Cal. Civ. C. Sec. 1580. Field Civ. C. Sec. 765.

References

J. Neils Lumber Co. v. Farmers Lumber Co., 88 M 392, 396, 293 P 288.

Collateral References

Contracts⁹³14 and other particular topics.
17 C.J.S. Contracts § 31.

Mutuality of obligation between applicant for admission and charitable home. 10 ALR 2d 865.

13-317. (7489) Communication of consent. Consent can be communicated with effect only by some act or omission of the party contracting, by which he intends to communicate it, or which necessarily tends to such communication.

History: En. Sec. 2126, Civ. C. 1895; re-en. Sec. 4987, Rev. C. 1907; re-en. Sec. 7489, R. C. M. 1921. Cal. Civ. C. Sec. 1581. Field Civ. C. Sec. 766.

Collateral References

Contracts⁹³22 and other particular topics.
17 C.J.S. Contracts § 42.

13-318. (7490) Mode of communicating acceptance of proposal. If a proposal prescribes any conditions concerning the communication of its acceptance, the proposer is not bound unless they are conformed to; but in other cases any reasonable and usual mode may be adopted.

History: En. Sec. 2127, Civ. C. 1895; re-en. Sec. 4988, Rev. C. 1907; re-en. Sec. 7490, R. C. M. 1921. Cal. Civ. C. Sec. 1582. Field Civ. C. Sec. 767.

Collateral References

Contracts⁹³22(3) and other particular topics.
17 C.J.S. Contracts § 45.
12 Am. Jur. 530, Contracts, §§ 37 et seq.

13-319. (7491) When communication deemed complete. Consent is deemed to be fully communicated between the parties as soon as the party accepting a proposal has put his acceptance in the course of transmission to the proposer, in conformity to the last section.

History: En. Sec. 2128, Civ. C. 1895; re-en. Sec. 4989, Rev. C. 1907; re-en. Sec. 7491, R. C. M. 1921. Cal. Civ. C. Sec. 1583. Field Civ. C. Sec. 768.

13-320. (7492) Acceptance by performance of conditions. Performance of the conditions of a proposal, or the acceptance of the consideration offered with a proposal, is an acceptance of the proposal.

History: En. Sec. 2129, Civ. C. 1895; re-en. Sec. 4990, Rev. C. 1907; re-en. Sec. 7492, R. C. M. 1921. Cal. Civ. C. Sec. 1584. Field Civ. C. Sec. 769.

Collateral References

Contracts 22 and other particular topics.

17 C.J.S. Contracts § 41 et seq.

13-321. (7493) Acceptance must be absolute. An acceptance must be absolute and unqualified, or must include in itself an acceptance of that character which the proposer can separate from the rest, and which will conclude the person accepting. A qualified acceptance is a new proposal.

History: En. Sec. 2130, Civ. C. 1895; re-en. Sec. 4991, Rev. C. 1907; re-en. Sec. 7493, R. C. M. 1921. Cal. Civ. C. Sec. 1585. Field Civ. C. Sec. 770.

Operation and Effect

To conclude an agreement, the acceptance of the offer must be unconditional, and must in every respect meet and correspond with the terms of the offer. State ex rel. Henderson v. Board of State Prison Comms., 37 M 378, 390, 96 P 736, the principle being applied in this case to a

contract with the board of state prison commissioners for the care of inmates of the prison.

Collateral References

Contracts 23.

17 C.J.S. Contracts § 44.

Difference between offer and acceptance as regards place of payment or delivery as variance preventing consummation of contract. 3 ALR 2d 256.

13-322. (7494) Revocation of proposal. A proposal may be revoked at any time before its acceptance is communicated to the proposer, but not afterwards.

History: En. Sec. 2131, Civ. C. 1895; re-en. Sec. 4992, Rev. C. 1907; re-en. Sec. 7494, R. C. M. 1921. Cal. Civ. C. Sec. 1586. Field Civ. C. Sec. 771.

Deposit in Bank for Inspection—Failure To Act

Where the owner of oil land transmitted a lease to a bank with draft to be paid before delivery of the lease, and no payment was made, the lessee requesting and being granted additional time within which to examine the title, and no acceptance of the offer to lease was communicated to the owner after expiration of the time for acceptance, the owner had a right to revoke his offer by requesting a return of the lease and draft. Nadeau v. Texas Company, 104 M 558, 568, 69 P 2d 586, 593.

Operation and Effect

A contract is not created by a mere offer, even though kept open for nearly two months, which is revoked before acceptance. Donlan v. Arnold, 48 M 416, 422, 138 P 775.

In the absence of a consideration, a written offer to lease oil and gas lands

was revocable by the offeror at any time prior to the creation of a contract by acceptance, even though the time specified in which acceptance could be made had not expired, and withdrawal of the instrument by the offeror from the bank in which it had been deposited and notification of the fact to the offeree by the bank was a revocation, formal notice not having been necessary. Sunburst Oil & Gas Co. v. Neville et al., 79 M 550, 565, 257 P 1016.

A tender of resignation by a professor of the state university, was, under the facts presented, a mere offer to resign, i. e., an offer to terminate his contract of employment, and as such could be withdrawn by him at any time before its acceptance by the state board of education. State ex rel. Phillips v. Ford, 116 M 190, 198, 151 P 2d 171.

Collateral References

Contracts 19 and other particular topics.

17 C.J.S. Contracts § 50.

12 Am. Jur. 537, Contracts, §§ 31 et seq.

13-323. (7495) Revocation—how made. A proposal is revoked:

1. By the communication of notice of revocation by the proposer to the other party, in the manner prescribed by section 13-317 and 13-319, before his acceptance has been communicated to the former;

2. By the lapse of the time prescribed in such proposal for its acceptance, or if no time is so prescribed, the lapse of a reasonable time without communication of the acceptance;

3. By the failure of the acceptor to fulfil a condition precedent to acceptance; or,

4. By the death or insanity of the proposer.

History: En. Sec. 2132, Civ. C. 1895; re-en. Sec. 4993, Rev. C. 1907; re-en. Sec. 7496, R. C. M. 1921. Cal. Civ. C. Sec. 1587. Field Civ. C. Sec. 772.

References

Sunburst Oil & Gas Co. v. Neville et al., 79 M 550, 565, 257 P 1016.

13-324. (7496) Ratification of contract void for want of consent. A contract which is voidable solely for want of due consent may be ratified by a subsequent consent.

History: En. Sec. 2133, Civ. C. 1895; re-en. Sec. 4994, Rev. C. 1907; re-en. Sec. 7496, R. C. M. 1921. Cal. Civ. C. Sec. 1588. Field Civ. C. Sec. 773.

Collateral References

Contracts—22 et seq. and other particular topics.

17 C.J.S. Contracts § 39 et seq.

References

Cited or applied as section 4994, Revised Codes, in Koerner v. Northern Pacific Ry. Co., 56 M 511, 186 P 337; Larson v. Marey et al., 61 M 1, 201 P 685.

Joining in subsequent instrument as ratification of prior ineffective contract affecting real property. 7 ALR 2d 294.

13-325. (7497) Assumption of obligation by acceptance of benefits. A voluntary acceptance of the benefit of a transaction is equivalent to a consent to all the obligations arising from it, so far as the facts are known, or ought to be known, to the person accepting.

History: En. Sec. 2134, Civ. C. 1895; re-en. Sec. 4995, Rev. C. 1907; re-en. Sec. 7497, R. C. M. 1921. Cal. Civ. C. Sec. 1589. Field Civ. C. Sec. 774.

Estoppel by Acquiescence, Direct or Implied

A party seeking reformation of a contract on the ground of mistake in its execution, after becoming aware of the mistake or the circumstances are such that he will be presumed to have known of it, acquiesces in the instrument, he loses his right to reformation; acquiescence may be implied from an unreasonable delay in applying for redress after getting notice of the mistake. Cook-Reynolds Co. v. Beyer, 107 M 1, 9, 79 P 2d 658.

Plaintiff, who shortly after entering into a contract with defendant agreeing to trade his farm for that of the latter, discovered that he had been defrauded and gave notice of his intention to rescind, but continued in possession of the land acquired by him for nearly fourteen months and for a period of six months after he commenced action for rescission, and continued to use it as his own, paying an installment of taxes after knowledge of the fraud and six months after the deal assuring defendant that he would attend to the payment of a mortgage assumed by him on the trade, held to have waived the fraud and ratified the contract by his conduct. Beebe et al. v. James, 91 M 403, 416, 8 P 2d 803.

Operation and Effect

Under section 2-203, plaintiff corporation must be deemed to have had notice of the facts known to its manager in entering into an agreement whereby its debtor was released from liabilities by his assignment for the benefit of creditors, and its voluntary acceptance of the benefits of the transaction was equivalent to a consent to it. Stone-Ordean-Wells Co. v. Anderson et al., 66 M 64, 69, 212 P 853.

References

Cited or applied as section 4995, Revised Codes, in Hills v. Johnson, 52 M 65, 69, 156 P 122; Atkinson v. Roosevelt County et al., 66 M 411, 416, 214 P 74.

Collateral References

Contracts—22(1).

17 C.J.S. Contracts § 39.

CHAPTER 4

OBJECT

Section 13-401. Object of contract.
13-402. Requisites of object.

- 13-403. Impossibility, what deemed.
 13-404. When contract wholly void.
 13-405. When contract partially void.

13-401. (7498) Object of contract. The object of a contract is the thing which it is agreed, on the part of the party receiving the consideration, to do or not to do.

History: En. Sec. 2150, Civ. C. 1895; re-en. Sec. 4996, Rev. C. 1907; re-en. Sec. 7498, R. C. M. 1921. Cal. Civ. C. Sec. 1595. Field Civ. C. Sec. 775.

References

Cited or applied as section 2150, Civil Code, in *Glass v. Basin & Bay State Min. Co.*, 31 M 21, 32, 77 P 302.

Collateral References

Contracts §§ 7 and other particular topics.

17 C.J.S. Contracts § 29.

12 Am. Jur. 641, Contracts, §§ 149 et seq.

13-402. (7499) Requisites of object. The object of the contract must be lawful when the contract is made, and possible and ascertainable by the time the contract is to be performed.

History: En. Sec. 2151, Civ. C. 1895; re-en. Sec. 4997, Rev. C. 1907; re-en. Sec. 7499, R. C. M. 1921. Cal. Civ. C. Sec. 1596. Field Civ. C. Sec. 776.

References

Cited or applied as section 2151, Civil

Code, in *Glass v. Basin & Bay State Min. Co.*, 31 M 21, 32, 77 P 302.

Collateral References

Contracts §§ 9, 80, 103 et seq. and other particular topics.

17 C.J.S. Contracts §§ 98, 192, 208.

13-403. (7500) Impossibility, what deemed. Everything is deemed possible except that which is impossible in the nature of things.

History: En. Sec. 2152, Civ. C. 1895; re-en. Sec. 4998, Rev. C. 1907; re-en. Sec.

7500, R. C. M. 1921. Cal. Civ. C. Sec. 1597. Field Civ. C. Sec. 777.

13-404. (7501) When contract wholly void. Where a contract has but a single object, and such object is unlawful, whether in whole or in part, or wholly impossible of performance, or so vaguely expressed as to be wholly unascertainable, the entire contract is void.

History: En. Sec. 2153, Civ. C. 1895; re-en. Sec. 4999, Rev. C. 1907; re-en. Sec. 7501, R. C. M. 1921. Cal. Civ. C. Sec. 1598. Field Civ. C. Sec. 778.

Duty of Parties in Contracting

In order that a contract may be enforceable, the parties must express themselves in terms direct and explicit enough to enable their full intention to be ascertained to a reasonable degree of certainty. *Schwab v. McVey*, 54 M 422, 425, 171 P 277.

The parties to a contract must express themselves in terms direct and explicit enough to enable their full intention to be ascertained to a reasonable degree of certainty. *Evankovich v. Howard Pierce, Inc.*, 91 M 344, 351, 8 P 2d 653.

Impossibility of Performance

A Montana contract for construction of a complete operating oil refinery to process Oregon Basin crude oil so as to yield 60% gasoline containing not more than 10% sulphur had but a single object and

was void under sections 12-103, 12-104, 12-202, 12-203, 13-401, 13-404 and Sec. 10704, R. C. M. 1935 (since repealed), where it was impossible to obtain such a yield of gasoline, whether or not contractor knew or should have known of such impossibility, and contractor was entitled to a recovery on the quantum meruit; his bond did not permit recovery of damages; a collateral promise in the contract consisting of warranty was invalid and would not support action for breach of warranty; and contractor's lien was supported by the implied contract. *Smith Engineering Co. v. Rice*, 102 F 2d 492.

Void When Prohibited by Statute

A contract expressly prohibited by a valid statute is void, and courts may not disregard such prohibition. *Johnson v. Kaiser*, 104 M 261, 274, 65 P 2d 1179.

Wagering or Gambling Transactions; Grain Market

In order to invalidate a contract as a wagering or gambling transaction (instant

case grain market transaction) both parties must have intended that, instead of delivery of the article, there should be a mere payment of the difference between the contract price and the market price, i. e. a settlement of the difference, burden of proof is on the party assailing the transaction. *H. Earl Clack Co. v. Oltesvig*, 104 M 255, 259, 68 P 2d 586.

When Uncertainty Makes Contracts Void

Where it could not be determined from a printed order blank containing many pages and covering a large variety of jewelry, how many articles of a particular kind and price had been ordered, the memorandum of sale was so indefinite and uncertain as to make it unenforceable at law. *Price v. Stipek*, 39 M 426, 432, 104 P 195.

In an action by a lessor to recover his share of grain alleged to have been raised by the defendant under a contract of lease of agricultural land, the only definite portion of which was that which secured to defendant, without naming a consideration, the possession of the land for a specified time, but which did not bind him to do anything or raise any grain, the contract was void for uncertainty. *Schwab v. McVey*, 54 M 422, 425, 171 P 277.

A lease of agricultural lands which did not impose upon either party the work of preparing them for crops or provide who should furnish seed, bear the expense of harvesting, extra help, etc., was not void for uncertainty, it being implied under section 13-722, from the fact that the lessees were to have possession for the purpose of producing crops, that they were to do these things. *McDonald et al. v. McNinch et al.*, 63 M 308, 313, 206 P 1096.

Id. In an action for damages for breach of a lease of farm lands by the lessors, the lease held not void for uncertainty for failing minutely to describe a building site and right-of-way reserved by the lessors, where it was apparent therefrom that the burden of selecting them within a reasonable time was upon the lessors, and that they themselves had caused the uncertainty to exist.

A covenant in a lease of a building which required the lessee to complete the

upstairs portion thereof without any specifications as to how it was to be completed, whether for office, living-room or storage purposes, or as to the kinds of materials to be used, etc., held so vague and uncertain as to be incapable of enforcement and therefore void under this section. *Alderson v. Republican-Courier Co.*, 69 M 271, 280, 221 P 544.

In an action to quiet title to an interest in a ditch and water right, based upon conversations had by plaintiff with defendant, for work done on the ditch by him, evidence of plaintiff as to the alleged contract held so indefinite and uncertain, under this section, as not to constitute an enforceable agreement, it not appearing therefrom what amount of work plaintiff was to perform, or in which one of several ditches he was to have an interest, etc. *Thrasher v. Schreiber*, 77 M 221, 227, 250 P 600.

Agreement that is so vague and indefinite that it is impossible to collect from it full intention of parties is void, since neither court nor jury can make agreement for parties. *Schwartz v. Inspiration Gold Mining Co.*, 15 F Supp 1030, 1037.

References

Cited or applied as section 2153, Civil Code, in *Glass v. Basin & Bay State Min. Co.*, 31 M 21, 32, 77 P 302; *Christianson v. Mincoff*, 118 M 139, 164 P 2d 344, 347; *Kelly v. Silver Bow County*, 125 M 272, 233 P 2d 1035, 1036.

Collateral References

Provision for post-mortem payment for performance as affecting instrument's character and validity as a contract. 1 ALR 2d 1178.

Public policy as affecting enforceability as between the parties of agreement to purchase property at judicial or tax sale for their joint benefit. 14 ALR 2d 1271.

Ratification of antenuptial contract of marriage settlement notwithstanding failure of spouse to make proper disclosure of property owned. 27 ALR 2d 904.

Validity and effect of promise not to make a will. 32 ALR 2d 370.

13-405. (7502) When contract partially void. Where a contract has several distinct objects, of which one at least is lawful, and one at least is unlawful, in whole or in part, the contract is void as to the latter and valid as to the rest.

History: En. Sec. 2154, Civ. C. 1895; re-en. Sec. 5000, Rev. C. 1907; re-en. Sec. 7502, R. C. M. 1921. Cal. Civ. C. Sec. 1599. Field Civ. C. Sec. 779.

Collateral References

Contracts—137 and other particular topics.

17 C.J.S. Contracts § 289.

CHAPTER 5

CONSIDERATION

- Section 13-501. Good consideration, what constitutes.
 13-502. How far legal or moral obligation is a good consideration.
 13-503. Consideration lawful.
 13-504. Effect of illegality.
 13-505. Consideration executed or executory.
 13-506. Executory consideration.
 13-507. How ascertained.
 13-508. Effect of impossibility of ascertaining consideration.
 13-509. Same—possible of execution on face.
 13-510. Written instrument presumptive evidence of consideration.
 13-511. Burden of proof to invalidate sufficient consideration.

13-501. (7503) Good consideration, what constitutes. Any benefit conferred, or agreed to be conferred, upon the promisor, by any other person, to which the promisor is not lawfully entitled, or any prejudice suffered, or agreed to be suffered, by such person, other than such as he is at the time of consent lawfully bound to suffer, as an inducement to the promisor, is a good consideration for a promise.

History: En. Sec. 2160, Civ. C. 1895; re-en. Sec. 5001, Rev. C. 1907; re-en. Sec. 7503, R. C. M. 1921. Cal. Civ. C. Sec. 1605. Field Civ. C. Sec. 780.

Burden of Proof

The burden of showing a want of consideration sufficient to support an instrument lies with the party seeking to avoid it. *W. T. Rawleigh Co. v. Washburn et al.*, 80 M 308, 315 et seq., 260 P 1039; *Farmers' & Miners' State Bank v. Probst*, 81 M 248, 255, 263 P 693; *Morigeau v. Lozar*, 81 M 434, 439, 263 P 985.

Consideration Insufficient

Where a surgeon, after agreeing to perform an operation for a stated amount, was sought to be held under an alleged special contract subsequently made to the effect that he would guarantee that as a result of the operation plaintiff's hand on which it was to be performed would be rendered 100 per cent efficient, the alleged special contract held void for want of consideration, the past consideration of the operation not covering the subsequent contract of warranty. (*Mr. Justice Farr dissenting.*) *Wilson v. Blair*, 65 M 155, 211 P 289.

Consideration Sufficient—In General

Where the defendants were assignees of moneys to be made out of certain wood contracts, and plaintiff, an employee of the assignor, procured from the latter an order on defendants for wages due him, whereupon the defendants, on presentation of the order for payment, took an assignment from plaintiff of all moneys due him for wages, paying part of the order in cash and giving him a due-bill for the balance, the promise to pay the due-bill

was a sufficient consideration. *Parnell v. Davenport*, 36 M 571, 573, 93 P 939.

Plaintiff had drilled a well for defendants accepting their promissory notes in payment. The notes were not paid. The well proved unsatisfactory and the parties entered into another agreement whereby plaintiff undertook to put the well in working condition, defendants to execute new notes and a first mortgage upon their lands to secure the amount then due. Held, that the agreement to put the well in condition was a good consideration for the mortgage contract. *White v. Hulls et al.*, 59 M 98, 103, 195 P 850.

Held, in an action on a promissory note for \$650, a defense to which was want of consideration, that where plaintiff, in possession of public land under a claim of right to desert entry and upon which he had made improvements consisting of about three miles of fencing, located defendants thereon, delivering possession and surrendering the improvements to them, defendants giving the note in payment, there was sufficient consideration for the instrument. *McConnell v. Blackley*, 66 M 510, 515, 214 P 64.

Where defendants had bought various pieces of farm machinery under a conditional sale contract, giving their promissory note therefor, thereafter disposed of part of them, and upon failure to pay the note plaintiff in an action in claim and delivery recovered a portion of the property crediting the value thereof on the note, there was a sufficient consideration in support of plaintiff's action to recover the balance due on the note. *Lindsay Bros. Co. v. Montgomery et al.*, 68 M 294, 299, 216 P 795.

Under this section, any benefit conferred upon a promisor or a prejudice suffered or

agreed to be suffered by the promisee, as an inducement to the promisor, is a good consideration. *Farmers' & Miners' State Bank v. Probst*, 81 M 248, 255, 263 P 693.

Where defendant was conversant with the fact the money procured on a mortgage on her land was to be, and was, used to pay off an indebtedness of her father for supplies used by the family of which she was a member, and she made no complaint until action to foreclose was commenced, her defense that, having herself received but \$50 in cash of the \$4,000 loaned, there was a lack of consideration was unavailing. *Morigeau v. Lozar*, 81 M 434, 439, 263 P 985.

There was no basis for the contention that there was no consideration for the execution for the lease of a liquor establishment when in the lease there was a promise to pay a monthly rent, and also the lessee had released a mortgage on the liquor and beer licenses. *Sears v. Barker*, 126 M 101, 244 P 2d 516.

Extension of Time of Payment of Debt

Before plaintiff manufacturing company would enter into a renewal contract with a distributor of its goods, it required him to furnish a written contract of guaranty signed by responsible parties agreeing to pay the company on termination of the renewal contract the amount due it from the distributor at the time of the execution of the guaranty or what might become due thereafter; in consideration it promised to furnish the distributor with more goods. The guaranty was furnished, no further goods, however, being thereafter ordered. Held, in an action to recover on the guaranty, that there was a sufficient consideration to support the contract of guaranty of the distributor's indebtedness existing at the time of the execution of the contract, to-wit, extension of time of payment, and that, in addition, the agreement as to payment of existing and future indebtedness, being indivisible, was based upon the further consideration that the company would sell more goods to the distributor, the fact that he thereafter did not order more goods not affecting its sufficiency. *W. T. Rawleigh Co. v. Washburn et al.*, 80 M 308, 315 et seq., 260 P 1039.

An agreement by a debtor to pay interest during the period for which maturity of the debt is extended by the creditor is based on a sufficient consideration, in that the creditor promises to forbear bringing suit during the time of the extension, and the debtor foregoes his right to pay the debt before the end of that time. (*Hale v. Forbis*, 3 M 397, holding otherwise, overruled.) *Shipman v. Terrill et al.*, 84 M 322, 335, 276 P 21.

Forbearance to Sue

Forbearance to sue is a sufficient consideration to support a contract, provided there be an agreement, express or implied, to that effect, mere nonaction being of no avail. *Doorly v. Goodman*, 71 M 529, 537, 230 P 779.

Partial Consideration Held Sufficient

The fact that the maker of a promissory note did not receive all he desired by way of consideration did not vitiate his promise; having received a substantial part of it, it was sufficient to sustain the contract. *Farmers' & Miners' State Bank v. Probst*, 81 M 248, 255, 263 P 693.

Partly Past and Partly Executory

A promise founded partly on a past consideration and partly on an executory one is enforceable. *W. T. Rawleigh Company v. Miller*, 105 M 456, 562, 73 P 2d 552.

Pre-existing Debt Constitutes Value

A pre-existing debt constitutes value, and, therefore, the surrender of an old promissory note upon execution of one to take its place is a sufficient consideration for the latter, and the fact that the obligation surrendered is that of another person is immaterial. *First State Bank v. Mussigbrod et al.*, 83 M 68, 88, 271 P 695.

Prejudice Suffered by Payee

Where the purchaser of real property, desiring to assume the liability of the vendor upon a promissory note held by a bank, executed a new note to take the place of the former, and the bank, instead of applying a part of the cash payment made by the vendee and deposited by the vendor, to the payment of the latter's note, as it properly could have done, accepted the new note in lieu thereof, it thereby suffered such a prejudice which it was not lawfully bound to suffer as an inducement for the maker of the second note to sign it, as constituted a good consideration for the note. *Farmers' & Miners' State Bank v. Probst*, 81 M 248, 255, 263 P 693.

Promissory Note Constitutes Valuable Consideration

A promissory note given in consideration of an oil and gas lease held a valuable consideration, and the fact that the lessor more than a year after its delivery returned it to the lessee was immaterial; it having been the property of the lessor he could do with it as he saw fit. *Nadeau v. Texas Company*, 104 M 558, 569, 69 P 2d 586, 593.

Release of Debtor

Held, that the loss sustained by a debtor

in agreeing to make an assignment for the benefit of his creditors was a sufficient consideration for his release from liabilities owing by him to them, under this section, in that he suffered a prejudice which he was not lawfully bound to suffer. *Stone-Ordean-Wells Co. v. Anderson et al.*, 66 M 65, 69, 212 P 853.

References

Cited or applied as section 5001, Revised Codes, in *Emerson-Brantingham I. Co. v. Anderson*, 58 M 617, 632, 194 P 190; *Rowley v. Mullen*, 74 M 283, 289, 240 P 374; *Hale et al. v. Belgrade Co., Ltd., et al.*, 75 M 99, 114, 242 P 425; *Peterson v. Nelson*, 77 M 539, 550, 252 P 368; *Rentfro et al. v. Dettwiler*, 95 M 391, 399, 26 P 2d 992; *Kelly v. Grainey*, 113 M 520, 534, 129 P 2d 619; *State ex rel. Stafford v. Fox-Great Falls Theatre Corp.*, 114 M 52, 65, 132 P 2d 689.

13-502. (7504) How far legal or moral obligation is a good consideration. An existing legal obligation resting upon the promisor, or a moral obligation originating in some benefit conferred upon the promisor, or prejudice suffered by the promisee, is also a good consideration for a promise, to an extent corresponding with the extent of the obligation, but no further or otherwise.

History: En. Sec. 2161, Civ. C. 1895; re-en. Sec. 5002, Rev. C. 1907; re-en. Sec. 7504, R. C. M. 1921. Cal. Civ. C. Sec. 1606. Field Civ. C. Sec. 781.

Will Not Make One a Purchaser for Value

Performance by a child of the legal obligation to support an indigent parent may be sufficient consideration to support a conveyance to the child, but not such a consideration as to make the child a purchaser in good faith, and for a valuable consideration so as to entitle her to precedence over another purchaser under the recording statute, section 73-202. *Kelly v. Grainey*, 113 M 520, 534, 129 P 2d 619.

13-503. (7505) Consideration lawful. The consideration of a contract must be lawful within the meaning of section 13-801.

History: En. Sec. 2162, Civ. C. 1895; re-en. Sec. 5003, Rev. C. 1907; re-en. Sec. 7505, R. C. M. 1921. Cal. Civ. C. Sec. 1607. Field Civ. C. Sec. 782.

Operation and Effect

A contract which tends to suppress the investigation of a criminal offense is illegal, even though it does not amount to compounding of a felony, for the reason that it is contrary to good morals and public policy. *Portland Cattle Loan Co. v. Featherly*, 74 M 531, 547, 241 P 322.

Collateral References

Contracts—54 et seq.
17 C.J.S. Contracts § 74 et seq.
12 Am. Jur. 564, Contracts, §§ 72 et seq.

Restrictive agreement in respect of purchase of handling of petroleum products by operator of filling station as unenforceable for want of mutuality. 26 ALR 2d 221.

Restrictive agreement or covenant in respect of purchase or handling of petroleum products by operator of filling station as unenforceable for want of consideration. 26 ALR 2d 224.

Mutuality and enforceability of contract to furnish another with his needs, wants, desires, requirements, and the like, of certain commodities. 26 ALR 2d 1139.

References

Cited or applied as section 2161, Civil Code, in *Parnell v. Davenport*, 36 M 571, 573, 93 P 939; *W. T. Rawleigh Co. v. Washburn et al.*, 80 M 308, 315, 260 P 1039.

Collateral References

Contracts—75, 76 and other particular topics.

17 C.J.S. Contracts §§ 90, 118.
12 Am. Jur. 589, Contracts, §§ 96 et seq.

Moral obligation as consideration for contract—modern trend. 8 ALR 2d 787.

References

Cited or applied as section 2162, Civil Code, in *Glass v. Basin & Bay State Min. Co.*, 31 M 21, 32, 77 P 302; *Baltimore Process Co. v. Red Lodge B. Co.*, 66 M 407, 409, 213 P 798.

Collateral References

Contracts—103 et seq. and other particular topics.

17 C.J.S. Contracts §§ 192, 208.

13-504. (7506) Effect of illegality. If any part of a single consideration for one or more objects, or of several considerations for a single object, is unlawful, the entire contract is void.

History: En. Sec. 2163, Civ. C. 1895; re-en. Sec. 5004, Rev. C. 1907; re-en. Sec. 7506, R. C. M. 1921. Cal. Civ. C. Sec. 1608. Field Civ. C. Sec. 783.

By Whom Illegality may be Raised

Whenever the illegality of a contract sued upon appears, whether the showing be made by one side or the other, the disclosure is fatal to the case. *McManus v. Fulton*, 85 M 170, 189, 278 P 126.

Effect on Parties to Contract

Where a party comes into court seeking to enforce a contract which is against public policy or is prohibited by law, the court will refuse to aid either party and will leave them where they have placed themselves, irrespective of the moral side of the controversy or the claim that justice demands that the one who has received money which belongs to the other should account for it. *McManus v. Fulton*, 85 M 170, 189, 278 P 126.

Entire Contract is Void

A contract by the terms of which plaintiff in effect agreed, for a consideration of fifty thousand dollars, to furnish evidence which would enable defendant to either win two certain suits, or one of them, upon trial, or which would put the latter in such a position that he could force a favorable settlement of one or both of them, was an entire contract, and void as against the policy of the law. *Hughes v. Mullins*, 36 M 267, 277, 92 P 758.

Where there is but a single consideration passing for the performance of several separate and distinct acts one of which is unlawful, the entire contract, it not being severable, is void, particularly so where it is wholly executory. In re *Commings' Estate*, 89 M 405, 413, 298 P 350.

County commissioners cannot contract away duties which under the law are required to be performed by county officials. Thus, where the county commissioners contracted with an individual for the in-

dividual to abstract, make applications for tax deeds, giving, posting, and publishing proper notice of applications, and issuing tax deeds, the entire contract is void although in some instances the county commissioners may properly contract for abstracting. Here, it was unlawful for the county commissioners to contract away the duties of the county clerk and county treasurer relating to the making of applications for tax deeds, giving and posting of notice, and the issuing of tax deeds; therefore the entire contract is void. *Kelly v. Silver Bow County*, 125 M 272, 233 P 2d 1035, 1036.

Illegality Under Laws of Another State

A contract void in another state where made will not be enforced in Montana. *McManus v. Fulton*, 85 M 170, 189, 278 P 126.

Wagering or Gambling Transactions—Grain Market

In order to invalidate a contract as a wagering or gambling transaction (instant case grain market transaction) both parties must have intended that, instead of delivery of the article, there should be a mere payment of the difference between the contract price and the market price, i. e. a settlement of the difference, burden of proof on the party assailing the transaction. *H. Earl Clack Co. v. Oltesvig*, 104 M 255, 259, 68 P 2d 586.

References

Cited or applied as section 2163, Civil Code, in *Glass v. Basin & Bay State Min. Co.*, 31 M 21, 32, 77 P 302; *United States B. & L. Assn. v. Burns*, 90 M 402, 421, 4 P 2d 703.

Collateral References

Contracts—137.
17 C.J.S. Contracts § 289.
12 Am. Jur., Contracts, p. 645, § 151; p. 739, § 221.

13-505. (7507) Consideration executed or executory. A consideration may be executed or executory, in whole or in part. Insofar as it is executory, it is subject to the provisions of sections 13-401 to 13-405 of this code.

History: En. Sec. 2164, Civ. C. 1895; re-en. Sec. 5005, Rev. C. 1907; re-en. Sec. 7507, R. C. M. 1921. Cal. Civ. C. Sec. 1609. Field Civ. C. Sec. 784.

Collateral References

Contracts—78 and other particular topics.
17 C.J.S. Contracts § 94.

13-506. (7508) Executory consideration. When a consideration is executory, it is not indispensable that the contract should specify its amount

or the means of ascertaining it. It may be left to the decision of a third person, or regulated by any specified standard.

History: En. Sec. 2165, Civ. C. 1895; re-en. Sec. 5006, Rev. C. 1907; re-en. Sec. 7508, R. C. M. 1921. Cal. Civ. C. Sec. 1610. Field Civ. C. Sec. 785.

Operation and Effect

Under this statute it was competent for the plaintiff and defendant to agree upon and specify any person whom they might desire to determine the amount of plaintiff's fee. They might have designated

the sheriff of the county, a bank cashier, or any other person. If the testimony of the plaintiff is to be believed they did agree upon the judge of the probate court of Silver Bow county. *Fitzgerald v. Eisenhauer*, 62 M 582, 592, 206 P 685.

Collateral References

Contracts—82 and other particular topics.

17 C.J.S. Contracts § 73.

13-507. (7509) How ascertained. When a contract does not determine the amount of the consideration, nor the method by which it is to be ascertained, or when it leaves the amount thereof to the discretion of an interested party, the consideration must be so much money as the object of the contract is reasonably worth.

History: En. Sec. 2166, Civ. C. 1895; re-en. Sec. 5007, Rev. C. 1907; re-en. Sec. 7509, R. C. M. 1921. Cal. Civ. C. Sec. 1611. Field Civ. C. Sec. 786.

Collateral References

Contracts—50 and other particular topics.

17 C.J.S. Contracts § 74.

13-508. (7510) Effect of impossibility of ascertaining consideration. Where a contract provides an exclusive method by which its consideration is to be ascertained, which method is on its face impossible of execution, the entire contract is void.

History: En. Sec. 2167, Civ. C. 1895; re-en. Sec. 5008, Rev. C. 1907; re-en. Sec. 7510, R. C. M. 1921. Cal. Civ. C. Sec. 1612. Field Civ. C. Sec. 787.

Cross-Reference

Impossible conditions void, sec. 58-211.

13-509. (7511) Same—possible of execution on face. Where a contract provides an exclusive method by which its consideration is to be ascertained, which method appears possible on its face, but in fact is, or becomes, impossible of execution, such provision only is void.

History: En. Sec. 2168, Civ. C. 1895; re-en. Sec. 5009, Rev. C. 1907; re-en. Sec. 7511, R. C. M. 1921. Cal. Civ. C. Sec. 1613. Field Civ. C. Sec. 788.

Collateral References

Contracts—86 and other particular topics.

17 C.J.S. Contracts § 130.

13-510. (7512) Written instrument presumptive evidence of consideration. A written instrument is presumptive evidence of a consideration.

History: En. Sec. 2169, Civ. C. 1895; re-en. Sec. 5010, Rev. C. 1907; re-en. Sec. 7512, R. C. M. 1921. Cal. Civ. C. Sec. 1614.

Cross-Reference

Presumption of consideration, conclusive or rebuttable presumption, secs. 93-1301-6, 93-1301-7.

A Written Instrument Presumes Consideration

In an action on an instrument acknowledging an indebtedness and promising to pay it, a consideration need not be averred or proven independently of the proof of the contract itself. *Noyes v. Young*, 32 M 226, 236, 79 P 1063.

An instruction, given in an action to recover damages for the conversion of certain personal property seized by defendant constable, that a note secured by mortgage imported a valuable consideration, and that the burden of showing the want of consideration rested upon the party seeking to invalidate it, correctly stated the law, even though the mortgage was given to secure an antecedent debt. *Borden v. Lynch*, 34 M 503, 511, 87 P 609.

Under this and the following section, the plaintiff in an action on a promissory note is not required to show that the instrument had been given for a consideration, or a consideration equal, in point of value, to its face, since the law presumes

a sufficient consideration. *Ford v. Drake*, 46 M 314, 319, 127 P 1019.

A deed to land furnishes presumptive evidence of a consideration, and the burden of showing want of consideration sufficient to support it is upon him who seeks to invalidate it or avoid its effect. *Lee v. Laughery*, 55 M 238, 245, 175 P 873.

A written instrument is presumptive evidence of a good and sufficient consideration, and the burden of showing a want of consideration sufficient to support it lies with the party seeking to invalidate it on that ground. *Saint et al. v. Beal*, 66 M 292, 297, 213 P 248; *Dilts v. Brooks et al.*, 66 M 346, 349, 213 P 600; *Hinerman v. Baldwin et al.*, 67 M 417, 430, 215 P 1103; *Schauer v. Morgan et al.*, 67 M 455, 463, 216 P 347; *Guerin v. Sunburst Oil & Gas Co.*, 68 M 365, 368, 218 P 949; *Morigeau v. Lozar*, 81 M 434, 439, 263 P 985; *Bielenberg v. Higgins et al.*, 85 M 69, 71, 277 P 636.

Consideration When Pleaded Must be Proved Notwithstanding Presumption

While plaintiff in an action on the guaranty of a promissory note need not plead the consideration upon which it was based, where he does so and introduces proof in support of the allegation, the fact must be determined, not upon the presumption of consideration declared by this section, but upon the proofs offered. *Doorly v. Goodman*, 71 M 529, 536, 230 P 779.

Operation and Effect

This section applied in a case where the transactions under consideration were those whereby the relation of trustee and beneficiary was created, as distinguishing it from the operation of section 86-308

relating to transactions between trustees and beneficiaries after the relation of trustee and beneficiary has been created. *Hodgkiss v. Northland Petroleum Consolidated*, 104 M 328, 334, 57 P 2d 811.

Rebuttable Presumption

This statutory presumption, as applied to the contention of defendants in the instant case that the written waiver of plaintiff's claim to a block of stock in issue was evidence of consideration, held, sufficiently rebutted by the testimony of plaintiff and one of the defendants that nothing was paid for the waiver; "waiver" requires two parties, and to be operative, must be supported by an agreement founded on a valuable consideration, not necessarily monetary, a benefit to the waiving party or additional burden on the other being sufficient. *Gerard v. Sanner*, 110 M 71, 80, 103 P 2d 314.

References

Cited or applied as section 2169, Civil Code, in *Edwards v. Spalding*, 20 M 54, 59, 49 P 443; as section 5010, Revised Codes, in *Parchen v. Chessman*, 49 M 326, 337, 142 P 631; *McConnell v. Blackley*, 66 M 510, 514, 214 P 64; *Allen v. Montana Refining Co.*, 71 M 105, 120, 227 P 582; *Carlson v. Northern Pac. Ry. Co.*, 82 M 559, 566, 569, 268 P 549; *Sylvain et al. v. Page*, 84 M 424, 439, 276 P 16; *Sheridan Elec. Coop. v. Ferguson*, 124 M 543, 227 P 2d 597, 602; *Great Northern Ry. Co. v. Melton*, 193 F 2d 729, 733.

Collateral References

Contracts—88 and other particular topics.

17 C.J.S. Contracts § 583.

13-511. (7513) Burden of proof to invalidate sufficient consideration. The burden of showing a want of consideration sufficient to support an instrument lies with the party seeking to invalidate or avoid it.

History: En. Sec. 2170, Civ. C. 1895; re-en. Sec. 5011, Rev. C. 1907; re-en. Sec. 7513, R. C. M. 1921. Cal. Civ. C. Sec. 1615.

Operation and Effect

On attacking the release of a mortgage, which was given to him and released by himself, in the manner prescribed in section 52-207, defendant assumed the burden of showing the existence of facts sufficient to warrant a court of equity in setting it aside. *Mueller v. Renkes*, 31 M 100, 103, 77 P 512.

A written instrument is presumptive evidence of a good and sufficient consideration, and the burden of showing a want of consideration sufficient to support it lies with the party seeking to invalidate it on that ground. *Saint et al. v. Beal*, 66

M 292, 297, 213 P 248; *Dilts v. Brooks et al.*, 66 M 346, 213 P 600; *Lundquist v. Jennison et al.*, 66 M 516, 214 P 67; *Hinerman v. Baldwin et al.*, 67 M 417, 430, 215 P 1103; *Schauer v. Morgan et al.*, 67 M 455, 464, 216 P 347; *Allen v. Montana Refining Co.*, 71 M 105, 120, 227 P 582; *W. T. Rawleigh Co. v. Washburn et al.*, 80 M 308, 316, 260 P 1039; *Farmers' & Miners' State Bank v. Probst*, 81 M 248, 259, 263 P 693; *Morigeau v. Lozar*, 81 M 434, 439, 263 P 985; *Bielenberg v. Higgins et al.*, 85 M 69, 71, 277 P 636.

References

Cited or applied as section 2170, Civil Code, in *Noyes v. Young*, 32 M 226, 236, 79 P 1063; *Borden v. Lynch*, 34 M 503, 511, 87 P 609; as section 5011, Revised

Codes, in *Ford v. Drake*, 46 M 314, 317, 127 P 1019; *Lee v. Laughery*, 55 M 238, 245, 175 P 873; *Doorly v. Goodman*, 71 M 529, 536, 230 P 779; *Hale et al. v. Belgrade Co., Ltd., et al.*, 75 M 99, 112, 242 P 425; *Hodgkiss v. Northland Petroleum Consolidated*, 104 M 328, 334, 57 P 2d 811; *Gerard*

v. Sanner, 110 M 71, 80, 103 P 2d 314; *Great Northern Ry. Co. v. Melton*, 193 F 2d 729, 733.

Collateral References

Contracts 88.
17 C.J.S. Contracts § 583.

CHAPTER 6

CREATION OF CONTRACTS—ORAL AND WRITTEN

- Section 13-601. Contracts, express or implied.
13-602. Express contract defined.
13-603. Implied contract defined.
13-604. When contracts may be oral.
13-605. Contract not in writing through fraud may be enforced against fraudulent party.
13-606. What contracts must be in writing.
13-607. Effect of written contracts.
13-608. Contract in writing—takes effect when.
13-609. Provisions of chapter on transfers of real property.
13-610. Seals—how affixed.
13-611. Provisions abolishing seals made applicable.
13-612. Instruments effectual without seal.

13-601. (7514) Contracts, express or implied. A contract is either express or implied.

History: En. Sec. 2180, Civ. C. 1895; re-en. Sec. 5012, Rev. C. 1907; re-en. Sec. 7514, R. C. M. 1921. Cal. Civ. C. Sec. 1619. Field Civ. C. Sec. 789.

87 M 448, 455, 288 P 455; *Rentfro et al. v. Dettwiler*, 95 M 391, 398, 26 P 2d 992.

Collateral References

Contracts 3, 4 and other particular topics.

Cross-Reference

Joining express and implied contract in complaint, sec. 93-3301.

17 C.J.S. Contracts §§ 3, 4.

12 Am. Jur. 498, Contracts, §§ 4 et seq.

References

French v. County of Lewis and Clark,

13-602. (7515) Express contract defined. An express contract is one the terms of which are stated in words.

History: En. Sec. 2181, Civ. C. 1895; re-en. Sec. 5013, Rev. C. 1907; re-en. Sec. 7515, R. C. M. 1921. Cal. Civ. C. Sec. 1620. Field Civ. C. Sec. 790.

Collateral References

Contracts 3 and other particular topics.

17 C.J.S. Contracts § 3.

References

Rentfro et al. v. Dettwiler, 95 M 391, 398, 26 P 2d 992.

13-603. (7516) Implied contract defined. An implied contract is one the existence and terms of which are manifested by conduct.

History: En. Sec. 2182, Civ. C. 1895; re-en. Sec. 5014, Rev. C. 1907; re-en. Sec. 7516, R. C. M. 1921. Cal. Civ. C. Sec. 1621. Field Civ. C. Sec. 791.

Operation and Effect

Where a special administratrix had a deposit as such in a bank, and another, claiming to have been appointed special administrator, made demand on the bank

for the payment of the deposit, and the bank notified the depositor of the demand and was requested to refuse the demand and retain the deposit in the depositor's name, and thereupon the demandant sued the bank, and, after the removal of the depositor, demandant recovered judgment against the bank for the deposit and interest from the date of the demand, the depositor was not liable to the bank for

the interest, since there was no implied contract to indemnify the bank. *Murphy v. Nett*, 51 M 82, 87, 149 P 713.

Contracts implied by law, or quasi or constructive contracts, are a class of obligations which are imposed or created by laws without regard to the assent of the party bound, on the ground that they are dictated by reason and justice, and may be enforced by an action *ex contractu*. *French v. County of Lewis and Clark*, 87 M 448, 455, 288 P 455.

References

Rentfro et al. v. Dettwiler, 95 M 391, 398, 26 P 2d 992; *Erie v. Wahl*, 116 M 515, 523, 155 P 2d 201.

Collateral References

Contracts—4 and other particular topics.

17 C.J.S. Contracts § 4.

13-604. (7517) When contracts may be oral. All contracts may be oral except such as are specially required by statute to be in writing.

History: En. Sec. 2183, Civ. C. 1895; re-en. Sec. 5015, Rev. C. 1907; re-en. Sec. 7517, R. C. M. 1921. Cal. Civ. C. Sec. 1622. Field Civ. C. Sec. 792.

Collateral References

Contracts—31 and other particular topics.

17 C.J.S. Contracts § 55.

13-605. (7518) Contract not in writing through fraud may be enforced against fraudulent party. Where a contract, which is required by law to be in writing, is prevented from being put into writing by the fraud of a party thereto, any other party who is by such fraud led to believe that it is in writing, and acts upon such belief to his prejudice, may enforce it against the fraudulent party.

History: En. Sec. 2184, Civ. C. 1895; re-en. Sec. 5016, Rev. C. 1907; re-en. Sec. 7518, R. C. M. 1921. Cal. Civ. C. Sec. 1623. Field Civ. C. Sec. 793.

Collateral References

Frauds, Statute of—119(2).

37 C.J.S. Frauds, Statute of § 217.

13-606. (7519) What contracts must be in writing. The following contracts are invalid, unless the same, or some note or memorandum thereof, be in writing and subscribed by the party to be charged, or his agent:

1. An agreement that by its terms is not to be performed within a year from the making thereof.

2. A special promise to answer for the debt, default; or miscarriage of another, except in the cases provided for in section 30-105 of this code.

3. An agreement made upon consideration of marriage other than a mutual promise to marry.

4. An agreement for the sale of goods, chattels, or things in action, at a price not less than two hundred dollars, unless the buyer accept or receive part of such goods, chattels, or the evidences, or some of them, of such things, or pay at the time some part of the purchase-money; but when a sale is made at auction, an entry by the auctioneer in his sale book, at the time of the sale, the price, and the names of the purchasers and person on whose account the sale is made, is a sufficient memorandum.

5. An agreement for the leasing for a longer period than one year, or for the sale of real property, or of an interest therein; and such agreement, if made by an agent of the party sought to be charged, is invalid, unless the authority of the agent be in writing, subscribed by the party sought to be charged.

6. An agreement authorizing or employing an agent or broker to purchase or sell real estate for compensation or a commission.

History: Subd. 1-4; en. Secs. 12, 13, 14, 14, pp. 393, 394, Cod. Stat. 1871; re-en. p. 494, Bannack Stat.; re-en. Secs. 12, 13, Secs. 166, 167, 168, 5th Div. Rev. Stat.

1879; re-en. Secs. 223, 224, 225, 5th Div. Comp. Stat. 1887; amd. Sec. 2185, Civ. C. 1895; re-en. Sec. 5017, Rev. C. 1907. Subd. 5; ap. p. Sec. 8, p. 493, Bannack Stat.; re-en. Sec. 8, p. 393, Cod. Stat. 1871; re-en. Sec. 162, 5th Div. Rev. Stat. 1879; re-en. Sec. 219, 5th Div. Comp. Stat. 1887; amd. Sec. 2185, Civ. C. 1895; re-en. Sec. 5017, Rev. C. 1907. Subd. 6; en. Sec. 2185, Civ. C. 1895; re-en. Sec. 5017, Rev. C. 1907; all subdivisions re-en. Sec. 7519, R. C. M. 1921. Cal. Civ. C. Sec. 1624.

Cross-References

Auctioneer's entry as memorandum for sale, sec. 93-1401-7.

Contracts required to be in writing, secs. 93-1401-7, 93-1401-8.

Real property sales, authority of agents to be in writing, sec. 2-131.

Sales of personal property amounting to \$200 or more, sec. 74-201.

Section Generally

Allegations in Pleading

Although a contract to be valid must be in writing, that fact is a matter of proof and need not be alleged in the pleading. *Johnson v. Elliot*, 123 M 597, 218 P 2d 703, 706.

Memorandum

The memorandum must contain all the essentials of the contract but if the material elements are stated in general terms all the details or particulars need not be stated. *Johnson v. Elliot*, 123 M 597, 218 P 2d 703, 707.

An endorsed bank check with the additional words "payment land" written on it is insufficient to constitute the written "note or memorandum" required by the statutes for it does not contain all the essentials of the agreement. *Lewis v. Peterson*, 127 M 474, 267 P 2d 127, 128.

"Party to be Charged"

The "party to be charged" means the party to be charged in the particular suit. *Johnson v. Elliot*, 123 M 597, 218 P 2d 703, 707.

Presumption of Writing

The law will presume that a contract was in writing in the absence of any statement to the contrary. *Johnson v. Elliot*, 123 M 597, 218 P 2d 703, 706.

Subd. 1

Contracts Which Must be in Writing—In General

An oral agreement which by its terms is not to be performed within one year from its making is invalid, i. e., void for any purpose, and part performance does not take it out of the statute; hence it was error to permit evidence of the terms of

such an agreement to be introduced in an action to recover the reasonable value of services rendered in pursuance of the agreement. *Dreidlein v. Manger*, 69 M 155, 160, 220 P 1107.

Exceptions—In General

The verbal promise of a party, who has a claim against a ditch, to pay the lien of another against the ditch, is not within the statute of frauds. *Carothers v. Connolly*, 1 M 433, 435.

Where a contract between plaintiff and defendant as tenants in common provided for the erection of a house on the common property by defendant at his own expense, requiring him to make an equal division of the rents between them when the rents received equaled one-half the cost, and there was an immediate performance by plaintiff by his surrender to defendant of the entire control of the property, with all revenues to be derived from it, until the stipulated rent should pay for the erection of the building, the contract was enforceable irrespective of the provisions of subdivision 1 of this section. *Ayotte v. Nadeau*, 32 M 498, 519, 81 P 145.

An agreement to be performed within one year need not be in writing. *Awbery v. Schmidt*, 65 M 265, 274, 211 P 346.

Under the rule that where a contract is capable of performance within one year it is not invalid under the statute of frauds (this section) because not in writing, held, that an oral agreement made between plaintiff and defendant in the late fall to run a band of lambs as partners until they became yearlings (in the spring following) and if they should then take a "notion" they would continue the arrangement, was wholly optional with the parties and might have been fully executed within one year and hence was not invalid under the provisions of that section. *Miles v. Miles*, 76 M 375, 380, 247 P 328.

Subd. 2

Clauses of Oral Auto Insurance Contract Enforceable and Not Within Statute of Frauds

Where minds meet on an automobile insurance contract, it may rest in parol, and an injured third party may enforce it against the insurer, on the judgment, because the insolvency and direct suit clause contemplates no contract collateral to the primary obligation, and the primary purpose thereof is to protect the insured rather than the third party, and as such is indemnity, rather than guaranty, within the meaning of the statute of frauds. (Suit at bar on combination policy.) *Austin v. New Brunswick Fire Insurance Co.*, 111 M 192, 197, 108 P 2d 1036.

Contracts Which Must be in Writing— In General

A letter containing the following: "You will please make out the record in the P. case, and we will guaranty the payment of your fees by him, P.," expresses an agreement within the meaning of the statute. *O'Bannon v. Chumasero*, 3 M 419, 423.

A contract to pay another's debt must be in writing. *McGowan Commercial Co. v. Midland Coal & Lumber Co.*, 41 M 211, 219, 108 P 655.

If the language employed in making a promise to pay the debt of another is such that by immemorial usage and common custom it has but one meaning, the character of the promise is to be determined as a question of law; where, however, it is such that reasonable minds might differ as to the meaning intended to be conveyed, its character is to be determined as a question of fact. *Breidenbach et al. v. Upper Valley Orchards Co.*, 57 M 247, 187 P 1008.

Id. Where goods were ordered by and delivered to an independent contractor performing work for defendant company, and charged to him on plaintiff's books, and plaintiff in a former action to recover their price brought suit against the contractor alone, looking to him primarily and the company only as guarantor, the promise of the manager of the company to see that plaintiff "got his money" was a collateral one which, not being in writing, was void under the statute of frauds.

Id. Where credit for goods was extended to the person who ordered them and to whom they were delivered, and not exclusively to him who was sought to be held liable for their price under an oral promise to see that the seller "got his money," the promise was void under the statute of frauds, even though the promise was the principal inducement for the sale.

Exceptions—In General

Wherever the main purpose and object of the promise is not to answer for another, but to subserve some purpose of promisor's own, his promise is not within the statute, although it may be in form a promise to pay the debt of another, and although the performance of it may incidentally have the effect of extinguishing the liability of another. *Carothers v. Connelly*, 1 M 433, 436; *McGowan Commercial Co. v. Midland Coal & Lumber Co.*, 41 M 211, 221, 108 P 655.

As the law stood in 1895, the oral acceptance of a written order, whereby a creditor requested his debtor to pay the amount of his debt to a third person, was not deemed to be within the statute of frauds as constituting a promise to pay the debt of another. An agreement by such third person not to file a lien upon the

debtor's premises would be a good consideration for such acceptance. *Lavell v. Frost*, 16 M 93, 94, 40 P 146.

Oral Insurance Policy Neither "Special" Nor "General" Guaranty Within Statute of Frauds

The insolvency and direct suit clause under an oral insurance contract for public liability is not a special guaranty because no special promise is made by the insolvency or direct suit clause to the particular injured third party who sues upon a judgment against the insured, nor is it a general guaranty so worded that anyone to whom it is presented accepts a general promise to be answerable for a debt or duty in case of failure or default of another person who is liable in the first instance. Its primary intent is to protect the insured, rather than the third person, and its purpose is indemnity rather than guaranty. *Austin v. New Brunswick Fire Insurance Co.*, 111 M 192, 197, 108 P 2d 1036.

Vendor's Agreement to Pay Vendee's Debt to Mortgagee as Part of the Consideration for Return of the Property

Where a vendor orally agreed with vendee to pay off vendee's mortgagee for a loan with which vendee erected a filling station on the property, as part of the consideration for return of the property (including the newly erected improvement) held, upon vendor's failure to pay the mortgagee, that vendor's oral agreement was not within the statute of frauds. *Downing v. Crippen*, 114 M 436, 444, 138 P 2d 575.

Subd. 4

Exceptions—Complete Performance

Where an oral contract of sale of timber exceeding in value \$200 had been fully performed at the time the action was commenced, the contention that the transaction was void under the statute of frauds is without merit, complete performance taking the case out of the statute. *Stilling v. Kelly*, 66 M 441, 443, 214 P 66.

In General

Part payment of the purchase price upon a contract for the sale of cattle brought the transaction within the exception provided for in this section. *Case v. Kramer*, 34 M 142, 149, 85 P 878.

Where grain had been delivered and part of the purchase price had been paid by the elevator which had bought it, the seller was not required to produce a written memorandum of the transaction under the provisions of the statute of frauds (this section and subdivision); in such a state of facts the transaction is taken out of the statute. *Spurgeon v. Imperial Elevator Co.*, 99 M 432, 43 P 2d 891.

Subd. 5

Contracts Which Must be in Writing—In General

An express verbal contract for the sale of real estate is void under the statute of frauds. *Ryan v. Dunphy*, 4 M 342, 354, 1 P 710.

No recovery can be had for services in effecting a sale of realty rendered by plaintiff and accepted by defendant, unless there is a note or memorandum in writing of a contract for such services. *King v. Benson*, 22 M 256, 258, 56 P 280.

Where one of several lessors of a building had no written authority to sign an extension agreement containing an agreement for a conveyance of the land, for one of the other lessors, as required by subdivision 5 of this section, such extension agreement, which was for more than a year, was invalid. *Landt v. Schneider*, 31 M 15, 19, 77 P 307.

Where the interest acquired by a party under a contract is a right to have a conveyance of land to himself, the transfer of that interest, by whatever name called, is a grant of interest in real property which must be in writing. *Flinner v. McVay*, 37 M 306, 312, 96 P 340.

Id. Where the creation of an interest, such as an equity in land, must be evidenced by a writing, the transfer of that interest must likewise be so evidenced.

Where plaintiff sought to recover money on a demand loan, defendant was properly allowed to introduce testimony tending to show that the money paid him by the former was not a loan, but a partial payment upon the purchase price of real property sold under an oral contract, even though such contract of purchase was invalid, and therefore unenforceable, under the statute of frauds. *Perkins v. Allnut*, 47 M 13, 14, 130 P 1.

A contract to sell real estate belonging to another for a compensation must, under this section, be in writing, otherwise it is void; and where such a contract is in parol, testimony in support of a cause of action based upon it is inadmissible. *Dick v. King*, 73 M 456, 464, 236 P 1093.

An agreement for the leasing of real property for a period longer than one year must be in writing under this section, and an agreement which must be in writing is not valid if executed by an agent unless the latter is authorized in writing to enter into it, in the absence of ratification by his principal. *Sunburst Oil & Gas Co. v. Neville et al.*, 79 M 550, 562, 257 P 1016.

In an action for the cancellation of a promissory note and chattel mortgage securing it, alleged by plaintiff vendor to have been given by him to his vendee as security if plaintiff should be unable to perfect his title to a portion of the land sold (which title had been obtained, deed

being tendered), and claimed by defendant vendee to have been given under an oral agreement to take back the land sold, the amount of the note representing payments made by defendant on the purchase price, held, that such oral agreement was in effect one for the retransfer of real property and therefore void under the statute of frauds, which requires such an agreement to be in writing subscribed by the party to be charged, the plaintiff. *Eccles v. Kendrick*, 80 M 120, 259 P 609.

An alleged contract to sell realty on monthly installment basis which would require 15 years for performance, allegedly made by owner's agent, was invalid under statute of frauds in the absence of a writing signed by owner, either agreeing to sell or authorizing agent to so contract. *Mahoney v. Lester*, 118 M 551, 168 P 2d 339, 343.

Id. Where there was no writing evidencing any agreement for the sale of realty subscribed by either the owner or his agent there was no valid contract of sale.

Exceptions—Complete Performance

Where an agreement for an exchange of easements, such as those involving irrigation ditches, has been fully executed, it is valid though not in writing; this section being intended to prevent frauds, and not to encourage their perpetration. *Babcock v. Gregg*, 55 M 317, 323, 178 P 284.

Under an oral contract of lease of a tract of land for a term of two years, the lessee remained in possession for the entire term. In an action to recover a balance of \$275 of the total rent of \$300 stipulated for the lessee's defense was that the contract was void under the statute of frauds because not in writing. Held, that the landlord having fully performed his part of the agreement and the tenant having occupied the premises for the full term, the contract was taken out of the statute and the tenant was not in position to invoke its invalidity to shield him from payment of the rent. *Besse v. McHenry*, 89 M 520, 527, 300 P 199.

In General

A license to lay a water-main over or through land may be given by parol, as no interest in the land is given, but the license may be revoked at any time, even after it has been executed and money advanced in reliance thereon. *Great Falls Water Works Co. v. Great Northern Ry. Co.*, 21 M 487, 502, 54 P 963. See *Lewis v. Patton*, 42 M 528, 533, 113 P 745.

A contract between tenants in common for the erection of a house on the common property by one of them at his own expense, and requiring him to make an equal division of the rents when the rents

received equaled one-half the cost, is not a contract of leasing within the meaning of subdivision 5 of this section. *Ayotte v. Nadeau*, 32 M 498, 520, 81 P 145.

Option Contracts

The holder of an option to purchase land acquires nothing more than a personal privilege to purchase which does not ripen into an interest in the land itself until the privilege is exercised; hence where the optionee assigned his right to another and entered into an agreement with him whereby he (the assignor) was to find a buyer in consideration of half the profits realized on the sale, his engagement was to perform a service which could lawfully be made orally. *Awbery v. Schmidt*, 65 M 265, 274, 211 P 346.

Part Performance

An oral contract to sell land, which has been partly performed, is mutual, for both parties are reciprocally bound, the one to convey, and the other to pay the purchase price. *Cobban v. Hecklen*, 27 M 245, 259, 70 P 805.

Part performance of a parol lease of real property for a term beyond that allowed by the statute of frauds (this section, subd. 5) takes it out of the operation of the statute, and taking possession, making alterations in the building and paying the rent agreed upon for a considerable period of time constitute part performance. *Kettlekamp et al. v. Watkins et al.*, 70 M 391, 399, 225 P 1003.

Held, that plaintiff's acts in relinquishing his option on a new business location on the oral promise of the defendant, his landlord, that if he would do so he (defendant) would renew the lease plaintiff then held for an additional three years, a provision which rendered the promise void under the statute of frauds, was such a part performance under the following rule as removed the agreement from the operation of the statute. *McIntyre et al. v. Dawes*, 71 M 367, 375, 229 P 846.

Id. Part performance which will avoid the statute of frauds may consist of an act done in the performance of the contract which puts the party performing it in such a situation that the nonenforcement of the agreement would be a fraud upon him.

Where plaintiff in an action for the cancellation of a promissory note claimed by defendant to have been given in consideration of an oral contract to convey real property, never entered into possession, and defendant neither pleaded nor proved that by plaintiff's alleged part performance of the contract consisting of having the property assessed in his name and paying the taxes thereon for several years, he (defendant) had been placed in such a situation that nonperformance

would be a fraud upon him, the acts of plaintiff did not constitute such part performance as will take the contract out of the statute of frauds. *Eccles v. Kendrick*, 80 M 120, 259 P 609.

What Constitutes an Interest in Land

A permanent right-of-way across the land of another for ditch purposes constitutes an interest in the real property, an easement, which under this section, must be in writing; whereas a license to so use the land does not create such an interest, may be given by parol and is revocable at will even though the licensee has expended time and money in acting thereon. *Rentfro v. Dettwiler*, 95 M 391, 397, 26 P 2d 992.

What May Constitute Memorandum

A letter written by vendee to vendor pending fulfillment of an escrow agreement which was claimed invalid under the statute of frauds, in which letter the writer acknowledged he had agreed to purchase the land in question, and that unless the vendor should fulfill the condition of the escrow agreement within a given time the transaction would be called off, was a sufficient memorandum in writing by the party to be charged, to bar the operation of the statute under this section. *Conner v. Helvik*, 105 M 437, 452, 73 P 2d 541.

Subd. 6

Burden of Proof

The rule is well settled that though a contract, to be valid under the statute, must be evidenced by a writing and subscribed by the party to be charged or his agent, the fact that it is in writing is a matter of proof and not of allegation in pleading. *Sweetland v. Barrett*, 4 M 217, 223, 1 P 745; *Mayger v. Cruse*, 5 M 485, 493, 6 P 333; *Hefferlin v. Karlman*, 29 M 139, 150, 74 P 201; *Blankenship v. Decker*, 34 M 292, 298, 85 P 1035.

Where the value of property involved in a sale is sufficient to bring the contract of sale within the provisions of this section, the burden is on plaintiff, in an action for breach of the contract, to establish by a preponderance of evidence that a valid contract under the statutes was entered into between the parties, together with a breach of such contract, and the consequent damages. *Brophy v. Idaho P. & P. Co.*, 31 M 279, 283, 78 P 493.

Plaintiff in an action to recover a broker's commission for procuring a purchaser for real property has the burden of showing such a contract as would be valid under this section. *Newman v. Dunleavy*, 51 M 149, 156, 149 P 970.

Contracts Which Must be in Writing—In General

Where it did not appear that a broker's

contract of employment to sell real estate was in writing, or that any note or memorandum thereof, signed by the party to be charged, had been executed as required by subdivision 6 of this section, no recovery could be had for services rendered thereon. *Marshall v. Trerise*, 33 M 28, 31, 81 P 400.

Under this section, subdivisions 5 and 6, and section 2-116, any contract conferring upon an agent or broker authority to make a sale, or to contract to make a sale, of real estate must be in writing. *Hartt v. Jahn et al.*, 59 M 173, 181, 196 P 153.

Under this section, subdivision 6, an agreement authorizing or employing an agent or broker to sell real estate on commission must be in writing, as must also a subsequent modification of its terms, so long as the contract or modification is executory in character, the rule, however, not applying where the contract has been executed. *Cobb v. Warren*, 64 M 10, 18, 208 P 928.

Under this section, which is mandatory, a brokerage contract for the sale of real property as well as any modification in terms, must be in writing and subscribed by the party to be charged, or his authorized agent, to permit a broker to recover compensation or a commission on sale of the property by the owner. *Skinner v. Red Lodge Brewing Co.*, 79 M 292, 296, 256 P 173.

Under the statute of frauds (this section) one who seeks to recover a broker's commission upon an agreement authorizing him to procure a purchaser of real property must be able to show a note or memorandum, subscribed by the party to be charged or his agent, and where the original agreement was modified in its terms, the modification must likewise have been in writing and subscribed, the two being considered together as constituting the note or memorandum required by this section. *Gantt v. Harper*, 82 M 393, 402, 267 P 296.

Subdivision 6 of this section applies when the subject-matter of the agency is real estate as distinguished from personal property and where compensation or a commission is claimed regardless of whether the agent has authority to make a conveyance. *Featherman v. Kennedy*, 122 M 256, 200 P 2d 243, 244.

Where contract with agent for sale of real property was not in writing there can be no recovery of a commission either on the contract or on quantum meruit. *Featherman v. Kennedy*, 122 M 256, 200 P 2d 243, 245.

Exceptions—Option Holder

Since the person to whom an option to buy land is granted acquires no interest in the property itself until he exercises the privilege granted, a contract between the plaintiff and defendant under which the former was to secure the assignment

of an option from the holder thereof to defendant did not amount to an employment of plaintiff as a broker or agent to buy land or an interest in land which under subdivision 6, of this section, is required to be in writing, but was one to perform a service which could lawfully be made by parol. *Kramer v. Schmidt*, 62 M 568, 570, 206 P 620.

Invalid Contracts When Admissible as Evidence

Though an oral contract be invalid under the statute of frauds and in an action thereon evidence seeking to establish it is incompetent, it may be received as evidence in support of a plea such as ratification. *Arnold et al. v. Genzberger et al.*, 96 M 358, 373 et seq., 31 P 2d 396.

The word "invalid" as employed in this section means that the contract referred to, unless in writing, is of no force or effect, and hence such contract cannot be relied upon or furnish evidence for any purpose. *Mahoney v. Lester*, 118 M 551, 168 P 2d 339, 343.

Life Insurance—Change of Beneficiary

This section applies to matters required by the statute of frauds, not to private contracts where parties have stipulated that certain things shall be in writing; hence an attorney's authority to request a change of beneficiary in a life insurance policy need not be in writing. *Conlon v. Northern Life Insurance Co.*, 108 M 473, 499, 92 P 2d 284.

Memorandum Executed After Services Performed

Generally, memorandum executed after services have been performed is sufficient to satisfy requirement of statute of frauds. *Johnson v. Ogle*, 120 M 176, 181 P 2d 789, 791.

Modifications Must be in Writing

Under this subdivision, mandatory in character, a broker's contract for the sale of real property as well as any subsequent modification thereof, must be in writing; hence a claim that the written contract was modified by parol may not be sustained. A broker, authorized to sell an entire tract of land, who procures a purchaser for a part of it, is not entitled, either on the contract or on a quantum meruit, to compensation for the part sold. Held, also, that procuring a lessee does not fulfill obligation to procure a purchaser, where the option to purchase was not exercised. *Roscow v. Bara*, 114 M 246, 253, 135 P 2d 364.

Note or Memorandum

While a brokerage contract sufficient to avoid the statute of frauds may be established by an interchange of letters

between the broker and the owner of real property sold, a letter written by the secretary-manager of defendant corporation as an individual and not in his official capacity to another of its stockholders stating the attitude of certain holders of stock relative to a sale of the company's real property, the terms to be exacted and commission to be allowed in case sale was made to "anyone," was neither the act of the corporation defendant nor such a note or memorandum as is contemplated by the statute of frauds, and therefore plaintiff broker was properly nonsuited in his action to recover commissions for the sale of the property. *Skinner v. Red Lodge Brewing Co.*, 79 M 292, 296, 256 P 173.

A promissory note (or mortgage) said to have been given in connection with the oral transfer of real property, is not a sufficient memorandum to take the contract out of the operation of the statute of frauds, within the meaning of this section, declaring such a contract invalid unless a note or memorandum thereof be in writing and subscribed by the party to be charged. *Eccles v. Kendrick*, 80 M 120, 259 P 609.

The services rendered by a real estate broker in securing a purchaser constitute the consideration for the commission sought to be recovered by him in his action against the seller; the memorandum evidencing his employment does not require a consideration, and a memorandum executed after the services have been performed is sufficient to satisfy the requirement of the statute of frauds. *Gantt v. Harper*, 86 M 69, 281 P 915.

No particular form of language or instrument is necessary to constitute a memorandum or note in writing under statute of frauds, and a receipt may be sufficient, and two or more writings properly connected may be considered together. *Johnson v. Ogle*, 120 M 176, 181 P 2d 789, 791.

Id. Parol evidence is admissible to explain ambiguities in notes or memorandum relied upon as taking contract out of statute of frauds, and to apply the note or memorandum to the subject matter.

Performance of Contract by Buyer and Seller

The fact that the contract between the buyer and seller of real estate has been fully performed has nothing to do with the contract between the seller and the agent claiming a commission and cannot have the effect of removing such contract from the operation of the statute of frauds. *Featherman v. Kennedy*, 122 M 256, 200 P 2d 243, 246.

What Brokers' Contracts Not Required to be in Writing

Where a broker is employed to procure persons willing to enter into a contract

of lease or option and is successful in interesting someone, with whom the owner contracts for a sale on more advantageous terms than a lease or option would have been, the broker is entitled to the commission stipulated for, and broker's employment contract need not be in writing, but if broker purports to sign for the employer, such authority is required to be in writing. *O'Neill v. Wall*, 103 M 388, 391, 62 P 2d 672.

Id. A contract employing a broker or agent to negotiate an option to purchase land does not amount to an employment of such broker or agent to buy or sell real estate within the meaning of this subdivision and therefore need not be in writing, since one acquiring an option to purchase land acquires but a privilege to purchase, being not an interest in land until exercised.

Id. A lease of land is not real estate and therefore a contract employing a broker to procure or sell a lease is not within this section, and therefore need not be in writing.

When Objection is Waived

Though a contract may have been executed in contravention of this section, it will not be declared void, where the statute is not pleaded. *Mitchell v. Henderson*, 37 M 515, 520, 97 P 942.

The objection that a contract in suit is invalid under the statute of frauds is waived where the point that the contract, to be enforceable, must be in writing, was not raised either in the pleadings or by objection to the introduction of evidence. *Alley v. Peeso*, 88 M 1, 9, 290 P 238.

References

Cited or applied as section 162, Fifth Division of Revised Statutes of 1879, in *Ryan v. Davis*, 5 M 505, 510, 6 P 339; as section 167, Fifth Division of Revised Statutes of 1879, in *Frank v. Murray*, 7 M 4, 14 P 654; as section 233, Fifth Division of Compiled Statutes of 1887, in *Ida v. Leiser*, 10 M 5, 14, 24 P 695; as section 224, Fifth Division of Compiled Statutes of 1887, in *Jacobs Sultan v. Union Mercantile Co.*, 17 M 61, 42 P 109; as section 2185, Civil Code, in *Easterly v. Jackson*, 29 M 496, 502, 75 P 357; *McCormick v. Johnson*, 31 M 266, 269, 78 P 500; as section 5017, Revised Codes, in *Centennial Brewing Co. v. Rouleau*, 49 M 490, 503, 143 P 969; *Edwards v. Plains Light & Water Co.*, 49 M 535, 539, 143 P 962; *Wilburn v. Wagner et al.*, 59 M 386, 393, 196 P 973; *Schmuck v. Beck*, 72 M 606, 234 P 477; *Williams v. Neal et al.*, 83 M 244, 250, 271 P 455; *Standard Oil Co. v. Idaho Community Oil Co.*, 98 M 131, 37 P 2d 660; *Electrical Products Consolidated v. ElCampo, Inc.*, 105 M 386, 391, 73 P 2d 199; *Ikovich v. Silver Bow Motor*

Co., 117 M 268, 276, 157 P 2d 785; Bauer v. Monroe, 117 M 306, 311, 320, 158 P 2d 485; Christianson v. Mincoff, 118 M 139, 164 P 2d 344, 347; Epletveit v. Solberg, 119 M 45, 169 P 2d 722, 728; Dineen v. Sullivan, 123 M 195, 213 P 2d 241.

Collateral References

Brokers 43; Frauds, Statute of 1 et seq.

12 C.J.S. Brokers § 62; 37 C.J.S. Frauds, Statute of § 1 et seq.

49 Am. Jur. 366, Statute of Frauds, §§ 4 et seq.

Promise by other than the principal to indemnify a surety, as one to answer for the debt, default, or miscarriage of another. 1 ALR 383 and 68 ALR 347.

Statute of Frauds: Promise by stockholder, officer, or director to pay debt of corporation. 8 ALR 1198; 52 ALR 787; and 67 ALR 506.

When promise made in consideration of marriage is within Statute of Frauds. 10 ALR 321 and 21 ALR 311.

Validity and effect of oral agreement in alternative, one of the alternatives being within the Statute of Frauds. 13 ALR 271.

Agreements in relation to exchange or remittance as within Statute of Frauds. 19 ALR 1140.

Pleadings, depositions, testimony, or statements in court as constituting a sufficient writing within the Statute of Frauds. 22 ALR 735.

Signing of contract by agent of undisclosed principal as satisfying Statute of Frauds. 23 ALR 932 and 138 ALR 330.

Necessity of written authority to enable agent to make contract within Statute of Frauds. 27 ALR 606.

Oral contract for year's service as within Statute of Frauds. 27 ALR 663 and 114 ALR 416.

Name of principal or of authorized agent, in body of instrument, as satisfying Statute of Frauds where transaction was not conducted by him. 28 ALR 1114.

Agreement to release, discharge, or assign real estate mortgage as within Statute of Frauds. 32 ALR 874.

Statute of Frauds as affecting validity of contract purporting to be for permanent employment. 35 ALR 1440 and 135 ALR 688.

One party, or his agent, as the agent of the other party for the purpose of signing contract or memorandum as required by the Statute of Frauds. 47 ALR 201.

Oral contract to enter into written contract as within Statute of Frauds. 58 ALR 1015.

Promise of landlord or tenant to pay for supplies furnished to tenant or subtenant as within Statute of Frauds in

relation to contracts to answer for the debt, default, or miscarriage of another. 59 ALR 179.

Contracts relating to corporate stock as within provisions of Statute of Frauds dealing with sales of goods, etc. 59 ALR 597.

Failure to comply with Statute of Frauds as to a part of a contract within the statute as affecting the enforceability of another part not covered by the statute. 71 ALR 479.

Extrinsic writing referred to in written agreement as part thereof for purposes of Statute of Frauds. 73 ALR 1383.

Promise to pay another's antecedent debt in consideration of agreement to cancel it as within Statute of Frauds as a promise to pay debt, default or miscarriage of another. 74 ALR 1025.

Sufficiency of writing under statutes requiring agreements for the payment of commission, or authorizing or employing a broker for the sale or purchase of real estate for compensation or commission, or a memorandum thereof, to be in writing. 80 ALR 1456.

Statute of Frauds: Necessity that each of the several papers constituting a contract be signed by the party to be charged. 85 ALR 1184.

Oral promise of officer, director, or stockholder in relation to bank deposit as within Statute of Frauds. 95 ALR 1137.

Language used by owner or other person interested in building or construction contract, importing a promise to pay a subcontractor, materialman, or employee of contractor or subcontractor, or one making advances to him, as a promise to answer for the debt or default of another. 99 ALR 79.

Undelivered deed or escrow, pursuant to oral contract, as satisfying Statute of Frauds. 100 ALR 196.

Oral contract of employment terminable by either party at will as within Statute of Frauds relating to contracts not to be performed within year. 104 ALR 1006.

Applicability of statute of frauds to contracts to surrender, rescind, or abandon trusts. 106 ALR 1313.

Option for renewal or extension of contract for a year or less as affecting applicability of statute of frauds or other public regulation regarding contracts not to be performed within a year. 111 ALR 1105.

Parol lease for term of a year to commence in future as within statute of frauds. 111 ALR 1465.

Writing between one of the parties to a contract and his agent or a third person as satisfying statute of frauds. 112 ALR 490.

Place of signature on memorandum to satisfy statute of frauds. 112 ALR 937.

Part performance to take oral contract of lease out of statute of frauds predicated upon acts or conduct of one in possession of the property under another contract or right. 125 ALR 1468.

Public record as satisfying requirement of statute of frauds as to written contract or memorandum. 127 ALR 236.

Statute of frauds against oral contracts not to be performed within year as applicable to contracts susceptible by its terms, or by construction, of performance within year, where performance within that time is improbable or almost impossible. 129 ALR 534.

Money or other property in possession of seller, before contract was made, as satisfying condition of part payment which will take oral contract for sale of goods out of statute of frauds. 131 ALR 1252.

Right of recovery upon note, check, or other executory obligation representing consideration for a contract which the plaintiff is willing and able to perform, but which because of the statute of frauds would not have been enforceable against him. 132 ALR 1486.

Parol partition and the statute of frauds. 133 ALR 476.

Statute of frauds as applicable to a contract to be responsible for another's funeral expenses. 134 ALR 633.

Description in memorandum defective or silent as to boundary line of land retained by seller as sufficient to satisfy statute of frauds. 139 ALR 965.

Delivery of memorandum as necessary to its effectiveness to satisfy statute of frauds. 145 ALR 1024.

Retrospective applicability of statute of frauds. 148 ALR 1325.

Brokerage or agency contract concerning real property as within statute of frauds. 151 ALR 648.

Check or note as memorandum satisfying statute of frauds. 153 ALR 1112.

Enforceability, as regards proceeds of sale of property, of real estate trust that does not satisfy statute of frauds. 154 ALR 385.

Comment note: Parol gift of realty. 155 ALR 76.

Manner of pleading statute of frauds as defense. 158 ALR 89.

Initials as sufficient signature under statute of frauds. 159 ALR 253.

Oral contract of employment terminable by one, but not both, of the parties within one year as within provision of statute of frauds relating to contracts not to be performed within one year. 161 ALR 290.

Option in lease for extension of term or for a new lease as affecting applicability of provision of statute of frauds. 161 ALR 1094.

Contract to fill in land as one for sale

of goods within statute of frauds. 161 ALR 1158.

Memorandum which will satisfy statute of frauds, as predicable in whole or in part upon writings prior to the oral agreement. 1 ALR 2d 841.

Performance as taking contract not to be performed within a year out of the statute of frauds. 6 ALR 2d 1053.

Sale, or contract for sale, of standing timber as within provision of statute of frauds respecting sale or contract of sale of real property. 7 ALR 2d 517.

Check as payment within contemplation of statute of frauds. 8 ALR 2d 251.

Statutory necessity and sufficiency of written statement as to amount of compensation in broker's contract to promote purchase sale or exchange of real estate. 9 ALR 2d 747.

Sale of contractual rights; defect in written record as ground for avoiding sale. 10 ALR 2d 728.

Undelivered lease or contract (other than for sale of land) or undelivered memorandum thereof, as satisfying statute of frauds. 12 ALR 2d 508.

Failure to object to parole evidence or voluntary introduction thereof, as waiver of defense of statute of frauds. 15 ALR 2d 1333.

Sufficiency of memorandum of lease agreement to satisfy the statute of frauds, as regards terms and conditions of lease. 16 ALR 2d 621.

Sufficiency of description or designation of land in contract or memorandum of sale, under statute of frauds. 23 ALR 2d 6.

Necessity and sufficiency of statement of consideration in contract or memorandum of sale of land, under statute of frauds. 23 ALR 2d 164.

Rights of parties under oral agreement to buy or bid in land for another. 27 ALR 2d 1285.

All contracts for personal services as long as employee is able to continue and work to do satisfactory work, or the like, as within statute of frauds relating to contracts not to be performed within one year. 28 ALR 2d 878.

Validity of oral promise or agreement not to revoke will. 29 ALR 2d 1229.

Application of statute of frauds to promise not to make a will. 32 ALR 2d 375.

Construction of statute requiring representations as to credit, etc., of another to be in writing. 32 ALR 2d 743.

Interest of or benefit of person making representation as affecting applicability of statute requiring representations as to credit, etc., of another to be in writing. 32 ALR 2d 758.

Promise by stockholder, officer, or director to pay debt of corporation. 35 ALR 2d 906.

13-607. (7520) Effect of written contracts. The execution of a contract in writing, whether the law requires it to be written or not, supersedes all the oral negotiations or stipulations concerning its matter which preceded or accompanied the execution of the instrument.

History: En. Sec. 2186, Civ. C. 1895; re-en. Sec. 5018, Rev. C. 1907; re-en. Sec. 7520, R. C. M. 1921. Cal. Civ. C. Sec. 1625. Field Civ. C. Sec. 795.

Operation and Effect—In General

Evidence of a contemporaneous agreement between the parties to a written sublease of a lode mining claim, that in case the sublessors should buy the property the lease would be extended, is inadmissible. *Armington v. Stelle*, 27 M 13, 18, 69 P 115. See *Kelly v. Ellis*, 39 M 597, 606, 104 P 873.

Evidence of oral promises or agreements, made prior to or contemporaneously with the execution of a written contract purporting to embrace all its terms, which contradict, change, add to, or subtract from the express terms, is inadmissible. *Riddell v. Peek-Williamson H. & V. Co.*, 27 M 44, 57, 69 P 241. See *State ex rel. Western A. & I. Co. v. District Court*, 55 M 330, 337, 176 P 613.

Evidence of negotiations and conversations immediately preceding the execution of a written contract is incompetent to show an agreement concerning its matter made by one claimed to be bound thereby. *Largey v. Leggat*, 30 M 148, 153, 75 P 950.

A contract in writing supersedes all the prior or contemporaneous oral negotiations and stipulations relating to the subject-matter of the agreement between the contracting parties; and therefore a party to it will not be heard to complain that there were other stipulations, unless they pertain to some collateral matter which operated as an inducement to his entering into the principal agreement. *Kelly v. Ellis*, 39 M 597, 606, 104 P 873.

A written contract supersedes any oral negotiations theretofore had relative to the subject-matter of it, and must be considered as containing all of its terms agreed upon at the time it was executed. *Arnold v. Fraser*, 43 M 540, 550, 117 P 1064.

Admission of parol evidence to vary and contradict the terms of a written contract is error. *Pritchett v. Jenkins*, 52 M 81, 82, 155 P 974.

In an action for damages for breach of a clause of a written contract of sale of a threshing-machine warranting it as being as well made, of good material, and that with proper use and management it would do as good work as any other machine of the same size manufactured for the like purpose, evidence of statements made by defendant's agent in making the sale that

it would thresh and clean alfalfa as well as any other machine of the same size, etc., was properly rejected as an attempt to vary the terms of the written instrument by parol. *Rowe v. Emerson-Brantingham Co.*, 61 M 73, 201 P 316.

Prior oral negotiations and directions as to points at which livestock should be stopped for resting and feeding were merged in the contract of shipment, where it and the waybills bore notations stating the points at which stops were to be made, and therefore parol testimony of directions to make other stops was incompetent as an attempt to vary the terms of the written contract. *Cook et al. v. Northern Pac. Ry. Co.*, 61 M 573, 586, 203 P 512.

A written agreement must be considered as containing all prior oral ones concerning its subject matter and its terms may therefore not be varied by oral testimony. *Leigland v. Rundle L. & A. Co.*, 64 M 154, 164, 208 P 1075; *Webber v. Killorn et al.*, 66 M 130, 132, 212 P 852; *Morehouse v. Northern Land Co.*, 68 M 96, 103, 216 P 792; *Wheeler v. James*, 70 M 37, 43, 223 P 900; *Swan v. Le Clair et al.*, 77 M 422, 427, 251 P 155; *Biering et al. v. Ringling*, 78 M 145, 151, 252 P 872.

Where a party seeks to recover on a written contract of sale resort must be had to it alone, under this section, in determining the obligations assumed by defendant in attaching his name to it. *Lewis v. Aronow*, 77 M 348, 359, 251 P 146.

Railroad Passenger Ticket

Held, that plaintiff having been compelled to purchase a passenger ticket to enable him to ride on the freight train with his horse, he was entitled to the benefit of such contract, and could not be limited to the conditions of the shipping contract as to the amount of damages recoverable, nor as to the time within which his claim for damages for personal injuries was required to be presented under it. *Jepsen v. Gallatin Valley Ry. Co.*, 59 M 125, 140, 195 P 550.

Test for Determining Whether Parol Testimony Varies Writing

In determining whether or not the terms of a written instrument are varied by parol testimony, the most satisfactory test is found in the circumstance whether or not the particular element of the alleged extrinsic negotiation is dealt with at all in the writing; if it is mentioned, covered or dealt with in the writing, then pre-

sumably the writing was meant to represent all of the transactions on that element. *Hosch v. Howe et al.*, 92 M 405, 409, 16 P 2d 699; *Continental Oil Co. v. Bell et al.*, 94 M 123, 131, 21 P 2d 65.

What Constitutes Oral Collateral Agreement Within Exception to Rule

An oral agreement, to be collateral within the meaning of the exception to the parol testimony rule (this section and section 93-401-13), and as such admissible in evidence as against the objection that it varies a written instrument, must relate to a subject distinct from that to which the writing applies; the writing must remain intact after the reception of the parol testimony. *Continental Oil Co. v. Bell et al.*, 94 M 123, 131, 21 P 2d 65.

When Parol Evidence Allowed

Where plaintiff alleged mistake and fraud, and the evidence disclosed that the inducement held out to plaintiff to sign an agreement was based on fraudulent representations of defendants that a lease need not be mentioned in a contract of sale of a business and the lease, the evidence was admissible to show the purchase of the lease and defendants' fraudulent conduct, over objection that it varied the contract. *Sathre v. Rolfe*, 31 M 85, 88, 77 P 431.

This section applies to oral negotiations or stipulations concerning the matter of the agreement; if one of the parties was induced to sign the writing by reason of the other's fraud or deceit with respect to some collateral matter, then he might be heard to complain. *Kelly v. Ellis*, 39 M 597, 606, 104 P 873.

A conversation between buyer and seller had prior to the execution of a bill of sale, with the terms of which it was not in conflict, and which was material to show the circumstances under which the writing was executed, was admissible in evidence and not open to the objection that it varied the written agreement. *Sutherland v. Green*, 49 M 379, 383, 142 P 636.

Instance of an agreement to furnish automobiles to be sold on commission, which agreement did not furnish its own interpretation, and as to which parol evidence was properly admitted to determine the intention of the parties. *Brockway v. Blair*, 53 M 531, 535, 165 P 455.

The parol testimony rule does not forbid an inquiry into the object of the parties in executing and receiving the instrument sued upon; while its language cannot be qualified or varied from its natural import, the circumstances under which it was entered into and the real intention of the parties may be shown by parol to prevent either of the parties to it from committing a fraud on the other by claiming it to be what it in fact is not. *Bridges & Co., Inc.*

v. Bank of Fergus Co., 77 M 524, 533, 251 P 1057.

In an action to recover the purchase price of merchandise (sewing machines) claimed to have been sold to defendants but alleged by them to have been delivered on consignment, plaintiff introduced in evidence a printed order for the goods obtained by its agent, which under the subject "Terms" contained the words "Finance Plan." Defendants contending that the contract did not contain all the terms agreed upon and that the words "Finance Plan" rendered the contract ambiguous, were permitted to introduce parol evidence to explain the term. Held, that the evidence was properly admitted, in that the meaning of the term is not so free from doubt that it may be said, as a matter of law, that it furnishes its own interpretation. *New Home Sewing M. Co. v. Songer et al.*, 91 M 127, 132, 7 P 2d 238.

Testimony of a separate and distinct oral agreement can be received only when it does not conflict with or contradict or add to what is contained in the written contract. *Warner v. Johns*, 122 M 283, 201 P 2d 986, 988.

When Parol Evidence Not Allowed

If a release or quitclaim deed containing a statement of consideration as one dollar and other considerations was the only instrument involved, oral testimony could be admissible to explain the "other considerations" but where the quitclaim deed was signed the same time as a property settlement agreement and the two instruments were part of the same transaction, oral evidence was inadmissible to show a different consideration. *Warner v. Johns*, 122 M 283, 201 P 2d 986, 988.

Where the consideration expressed in the written instrument is contractual in its nature, oral evidence is inadmissible to show a different consideration because then it changes the legal effect of the instrument. *Warner v. Johns*, 122 M 283, 201 P 2d 986, 988.

References

Cited or applied as section 2186, Civil Code, in *Easterly v. Jackson*, 29 M 496, 502, 75 P 357; as section 5018, Revised Codes, in *Ford v. Drake*, 46 M 314, 319, 127 P 1019; *Helena Light & Ry. Co. v. Northern Pacific Ry. Co.*, 57 M 102, 186 P 702; *Kock v. Rhodes et al.*, 57 M 447, 188 P 933; *Brown v. Homestake Exploration Co.*, 98 M 305, 39 P 2d 168; *Smith v. Fergus County*, 98 M 377, 39 P 2d 193; *Fiers v. Jacobson*, 123 M 242, 211 P 2d 968, 970.

Collateral References

Contracts—245 and other particular topics.

17 C.J.S. Contracts § 380 et seq.

Oral acceptance of written offer by party sought to be charged as satisfying statute of frauds. 30 ALR 972.

Compliance with statute requiring representations as to credit, etc., of another to be in writing. 32 ALR 2d 766.

13-608. (7521) Contract in writing—takes effect when. A contract in writing takes effect upon its delivery to the party in whose favor it is made, or to his agent.

History: En. Sec. 2187, Civ. C. 1895; re-en. Sec. 5019, Rev. C. 1907; re-en. Sec. 7521, R. C. M. 1921. Cal. Civ. C. Sec. 1626. Field Civ. C. Sec. 796.

Operation and Effect

A lease, like any other written contract, does not become effective until it is delivered, the mere signing of it not binding the parties; the object of the delivery of such an instrument is to indicate an intent on the part of the grantor to give effect to the instrument, and whether delivery is complete is largely a question of intention. *Nelson v. Davenport et al.*, 86 M 1, 6, 281 P 537.

Id. Delivery of an incompleated instrument is ineffective; hence where, at the time a lessee signed a receipt for a copy of a lease, the instrument was incomplete

in that one of the lessors had not signed it, the court properly found that it was ineffective for failure of delivery, the fact that later in the day, the missing signature was appended not changing the result in the absence of evidence that the instrument was delivered thereafter.

References

Cited or applied as section 5019, Revised Codes, in *Sutherland v. Green*, 49 M 379, 383, 142 P 636; *Jepsen v. Gallatin Valley Ry. Co.*, 59 M 125, 140, 195 P 550; *Wheeler v. James*, 70 M 37, 43, 223 P 900.

Collateral References

Contracts—42 and other particular topics.

17 C.J.S. Contracts § 64.

13-609. (7522) Provisions of chapter on transfers of real property. The provisions of the chapter on transfers in general, concerning the delivery of grants, absolute and conditional, apply to all written contracts.

History: En. Sec. 2188, Civ. C. 1895; re-en. Sec. 5020, Rev. C. 1907; re-en. Sec. 7522, R. C. M. 1921. Cal. Civ. C. Sec. 1627. Field Civ. C. Sec. 797.

References

Wheeler v. James, 70 M 37, 43, 223 P 900; *Nelson v. Davenport*, 86 M 1, 6, 281 P 537.

13-610. (7523) Seals—how affixed. A corporate or official seal may be affixed to an instrument by the mere impression upon the paper or other material on which such instrument is written.

History: En. Sec. 2189, Civ. C. 1895; re-en. Sec. 5021, Rev. C. 1907; re-en. Sec. 7523, R. C. M. 1921. Cal. Civ. C. Sec. 1628. Based on Field Civ. C. Sec. 798.

Collateral References

Contracts—36; Seals—3.

17 C.J.S. Contracts § 63; 79 C.J.S. Seals § 3.

13-611. (7524) Provisions abolishing seals made applicable. All distinctions between sealed and unsealed instruments are abolished.

History: En. Sec. 2190, Civ. C. 1895; re-en. Sec. 5022, Rev. C. 1907; re-en. Sec. 7524, R. C. M. 1921. Cal. Civ. C. Sec. 1629.

Collateral References

Contracts—36; Seals—1.

17 C.J.S. Contracts § 63; 79 C.J.S. Seals § 2.

13-612. (7525) Instruments effectual without seal. All instruments shall be as effectual without a seal as if the same had a seal attached thereto, but this section shall not apply to municipal or other corporations which by law are required to attest their action under seal.

History: En. Sec. 2191, Civ. C. 1895; re-en. Sec. 5023, Rev. C. 1907; re-en. Sec. 7525, R. C. M. 1921.

CHAPTER 7

INTERPRETATION OF CONTRACTS

Section	13-701.	Uniformity of interpretation.
	13-702.	Contracts—how to be interpreted.
	13-703.	Intention of parties—how ascertained.
	13-704.	Intention to be ascertained from language.
	13-705.	Interpretation of written contracts.
	13-706.	Writing—when disregarded.
	13-707.	Effect to be given to every part of contract.
	13-708.	Several contracts—when taken together.
	13-709.	Interpretation in favor of contract.
	13-710.	Words to be understood in usual sense.
	13-711.	Technical words.
	13-712.	Law of place.
	13-713.	Contracts explained by circumstances.
	13-714.	Contract restricted to its evident object.
	13-715.	Interpretation in sense in which promisor believed promisee to rely.
	13-716.	Particular clauses subordinate to general intent.
	13-717.	Contract—partly written and partly printed—written parts control.
	13-718.	Repugnancies—how reconciled.
	13-719.	Inconsistent words rejected.
	13-720.	Words to be taken most strongly against whom.
	13-721.	Reasonable stipulations—when implied.
	13-722.	Necessary incidents implied.
	13-723.	Time of performance of contract.
	13-724.	Time—when of essence.
	13-725.	When joint and several.
	13-726.	Same—in singular number.
	13-727.	Executed and executory contracts defined.

13-701. (7526) Uniformity of interpretation. All contracts, whether public or private, are to be interpreted by the same rules, except as otherwise provided by this code.

History: En. Sec. 2200, Civ. C. 1895; re-en. Sec. 5024, Rev. C. 1907; re-en. Sec. 7526, R. C. M. 1921. Cal. Civ. C. Sec. 1635. Field Civ. C. Sec. 800.

Cross-Reference

Construction of contracts, secs. 93-401-14 to 93-401-19.

References

J. Neils Lumber Co. v. Farmers Lumber

Collateral References

Contracts—143 and other particular topics.

17 C.J.S. Contracts § 294 et seq.

13-702. (7527) Contracts—how to be interpreted. A contract must be so interpreted as to give effect to the mutual intention of the parties as it existed at the time of contracting, so far as the same is ascertainable and lawful.

History: En. Sec. 2201, Civ. C. 1895; re-en. Sec. 5025, Rev. C. 1907; re-en. Sec. 7527, R. C. M. 1921. Cal. Civ. C. Sec. 1636. Field Civ. C. Sec. 801.

Contracts of Insurance

Contracts of insurance, like all others, must be construed with a view to carrying out the intention of the parties. McAuley v. Casualty Company of America, 39 M 185, 192, 102 P 586.

Duty of Courts

It is a well-settled rule of law that the

circumstances under which a contract is made, or the intent of the parties existing at that time, are only material when the contract is ambiguous in some of its terms. If it is plain and unambiguous, it needs no construction, and it is the duty of the court to enforce it as made by the parties. Bullard v. Smith, 28 M 387, 399, 72 P 761; Frank v. Butte & Boulder Mining & Lumber Co., 48 M 83, 89, 135 P 904.

Courts must give effect to every part of a contract so as to make its terms operative; they may not make a new contract for the parties, nor read language

into or eliminate lawful terms therefrom unless the words employed are meaningless or involve an absurdity. *Union Cent. Life Ins. Co. v. Jensen*, 74 M 70, 76, 237 P 518.

Interpretation of Parties

This section simply means that the intention of the parties shall be ascertained in the first instance by reference to the language employed by them. Where the words used are clear, certain, and unambiguous, interpretation may not be resorted to. The language employed must be given its ordinary meaning. *Quirk v. Rich*, 40 M 552, 558, 107 P 821; *Frank v. Butte & Boulder Mining & Lumber Co.*, 48 M 83, 89, 135 P 904.

The intention of the parties to a contract, such as an escrow agreement, is to be ascertained from the language used in the instrument, and this section, together with sections 13-703, 13-705 and 13-707, furnish the guide for its interpretation. *Knapp v. Andrus*, 56 M 37, 41, 180 P 908.

Where parties to a contract (deed) of doubtful or ambiguous meaning have placed a particular interpretation upon it, such interpretation is one of the best indications of their true intent. *Musselshell Valley F. & L. Co. v. Cooley*, 86 M 276, 293, 283 P 213.

Valid Though Burdensome and Unwise

Where no legal impediment is shown which would have prevented parties to a contract from entering into it or from expressing it in language of their own, courts must give effect to the meaning and intention of the parties as expressed in the language employed and may not make a new contract for them, the mere fact that as made the contract may appear unreasonable, burdensome or unwise to one of them being insufficient to avoid it, where the latter was of legal age, had all the facts clearly before him long prior to its execution and his alleged damage was due to his own inattention and carelessness. *Hinerman v. Baldwin et al.*, 67 M 417, 433, 215 P 1103.

Where Ambiguous

Where there is ambiguity in a contract, it is open, under this section and section

13-713, to interpretation, by the aid of evidence aliunde, so as to give effect to the mutual intention of the parties to it at the time it was made. *Butte Water Co. v. City of Butte*, 48 M 386, 397, 138 P 195.

References

Cited or applied as section 5025, Revised Codes, in *Lyon v. Dailey Copper M. & S. Co.*, 46 M 108, 120, 126 P 931; *Brockway v. Blair*, 53 M 531, 536, 165 P 455; *White v. Hulls et al.*, 59 M 98, 103, 195 P 850; *Comerford v. United States F. & G. Co.*, 59 M 243, 259, 196 P 984; *United States Nat. Bank v. Chappell*, 71 M 553, 566, 230 P 1084; *Solberg v. Sunburst Oil & Gas Co. et al.*, 73 M 94, 103, 235 P 761; *State v. Rosman et al.*, 84 M 207, 217, 274 P 850; *American Surety Co. v. Butler et al.*, 86 M 584, 592, 284 P 1011; *Roecher v. Commercial National Bank*, 87 M 570, 582, 289 P 388; *Black v. Martin*, 88 M 256, 269, 292 P 577; *New Home Sewing M. Co. v. Songer et al.*, 91 M 127, 134, 7 P 2d 238; *Brown v. Homestake Exploration Co.*, 98 M 305, 39 P 2d 168; *Stevens v. Steck et al.*, 101 M 569, 576, 55 P 2d 7; *Snider v. Carmichael*, 102 M 387, 409, 58 P 2d 1004; *Hodgkiss v. Northland Petroleum Consolidated*, 104 M 328, 337, 57 P 2d 811; *Shelley v. Normile*, 109 M 117, 125, 94 P 2d 206; *Letz v. Lampen*, 110 M 477, 480, 104 P 2d 4; *Norwegian Lutheran Church of America v. Armstrong*, 112 M 528, 531, 118 P 2d 380; *Hardenburgh v. Hardenburgh*, 115 M 469, 479, 146 P 2d 151; *Van De Putte v. Texas Pacific Coal & Oil Co.*, 35 F Supp 794, 797; *Davis v. Park Securities Corp.*, 117 M 393, 399, 159 P 2d 323; *Hart v. Barron*, 122 M 350, 204 P 2d 797, 807.

Collateral References

Contracts—147 and other particular topics.

17 C.J.S. Contracts § 295.

12 Am. Jur. 745, Contracts, §§ 226-326.

Measure and items of compensation of contractor under costs plus contract which is terminated, without breach, before completion. 28 ALR 2d 867.

Construction of contract not to make a will. 32 ALR 2d 370.

13-703. (7528) Intention of parties—how ascertained. For the purpose of ascertaining the intention of the parties to a contract, if otherwise doubtful, the rules given in this chapter are to be applied.

History: En. Sec. 2202, Civ. C. 1895; re-en. Sec. 5026, Rev. C. 1907; re-en. Sec. 7528, R. C. M. 1921. Cal. Civ. C. Sec. 1637. Field Civ. C. Sec. 802.

Where Automobile Liability Policy Held to Cover Use of Automobile Excluded Thereunder

Defendant, in the business of writing surety bonds and public liability policies,

furnishing performance bonds for contractors in construction of bridges and public liability insurance to indemnify public for injuries sustained by reason of work on highway, required under contract with the state, fully advised of the broad requirements contained therein, the performance of which it had guaranteed, will not be heard to say that the policy it actually wrote was less comprehensive than the requirement, and is liable for judgments against contractors for negligence of employees although the use was excluded

from coverage. *United States Fidelity & Guaranty Co. v. Doheny*, 123 F 2d 746, 748, 34 F Supp 888.

References

Cited or applied as section 5026, Revised Codes, in *The Henry O. Shepard Co. v. Freeman*, 40 M 144, 155, 105 P 484; *Knapp v. Andrus*, 56 M 37, 41, 180 P 908; *Wandell v. Johnson*, 71 M 73, 76, 227 P 58; *Van De Putte v. Texas Pacific Coal & Oil Co.*, 35 F Supp 794, 797; *White v. Saby*, 127 M 241, 260 P 2d 1116, 1118.

13-704. (7529) Intention to be ascertained from language. The language of a contract is to govern its interpretation, if the language is clear and explicit, and does not involve an absurdity.

History: En. Sec. 2203, Civ. C. 1895; re-en. Sec. 5027, Rev. C. 1907; re-en. Sec. 7529, R. C. M. 1921. Cal. Civ. C. Sec. 1638. Field Civ. C. Sec. 803.

Operation and Effect

It is the province of courts to interpret contracts which are open to interpretation, not to make new ones for the parties, or to alter or amend those which they themselves have made. *Emerson-Brantingham I. Co. v. Raugstad*, 65 M 297, 304, 211 P 305.

Where no legal impediment is shown which would have prevented parties to a contract from entering into it or from expressing it in language of their own, courts must give effect to the meaning and intention of the parties as expressed in the language employed and may not make a new contract for them, the mere fact that as made the contract may appear unreasonable, burdensome or unwise to one of them being insufficient to avoid it, where the latter was of legal age, had all the facts clearly before him long prior to its execution and his alleged damage was due to his own inattention and carelessness. *Hinerman v. Baldwin et al.*, 67 M 417, 433, 215 P 1103.

In the construction of a contract its language is to be resorted to in the first instance, but the conclusion to be reached depends, not upon the verbal clarity of the particular sentences or paragraphs, but upon the view to be taken of it in its entirety. *Roecher v. Commercial National Bank*, 87 M 570, 582, 289 P 388.

As against the contention that a release given by a claimant to one tortfeasor did not release the other joint tortfeasors because no consideration moved from the others to the plaintiff, and that they were

not parties thereto, held, that the release expressly recites its purpose and intention and showed on its face full satisfaction of the claim arising out of the accident as against all, that it is not necessary that consideration move from the other feasons to the claimant, and these matters could not controvert the clear, unambiguous language of the release, under this section. *Lisoski v. Anderson*, 112 M 112, 119, 112 P 2d 1055.

References

Cited or applied as section 2203, Civil Code, in *Harris v. Root*, 28 M 159, 166, 72 P 429; as section 5027, Revised Codes, in *The Henry O. Shepard Co. v. Freeman*, 40 M 144, 155, 105 P 484; *Quirk v. Rich*, 40 M 552, 558, 107 P 821; *Frank v. Butte & Boulder Min. & Lbr. Co.*, 48 M 83, 89, 135 P 904; *Knapp v. Andrus*, 56 M 37, 41, 180 P 908; *Wing et al. v. Brasher*, 59 M 10, 19, 194 P 1106; *White v. Hulls et al.*, 59 M 98, 103, 195 P 850; *State Bank of Darby v. Pew et al.*, 59 M 144, 155, 195 P 852; *Comerford v. United States F. & G. Co.*, 59 M 243, 259, 196 P 984; *General F. E. Co. v. Northwestern A. S. Co.*, 65 M 371, 211 P 308; *Wandell v. Johnson*, 71 M 73, 76, 227 P 58; *Union Cent. Life Ins. Co. v. Jensen*, 74 M 70, 76, 237 P 518; *Whittaker v. United States Fidelity & Guaranty Co.*, 300 Fed 129; *Hodgkiss v. Northland Petroleum Consolidated*, 104 M 328, 337, 57 P 2d 811; *Doheny v. United States Fidelity & Guaranty Co.*, 34 F Supp 888, 891; *Eggers v. General Refrigerating Co.*, 123 M 205, 210 P 2d 636, 643.

Collateral References

Contracts §147(2) and other particular topics.

17 C.J.S. *Contracts* § 296.

13-705. (7530) Interpretation of written contracts. When a contract is reduced to writing, the intention of the parties is to be ascertained from the writing alone, if possible; subject, however, to the other provisions of this chapter.

History: En. Sec. 2204, Civ. C. 1895; re-en. Sec. 5028, Rev. C. 1907; re-en. Sec. 7530, R. C. M. 1921. Cal. Civ. C. Sec. 1639. Field Civ. C. Sec. 804.

Custom Cannot Vary Writing

Where the terms of a contract of shipment of livestock were clear and explicit as to where stops should be made for feeding and resting, parol testimony to the effect that it was customary for shippers to have them stop for those purposes at another point was inadmissible. *Cook et al. v. Northern Pac. Ry. Co.*, 61 M 573, 586, 203 P 512.

How Intention to Be Determined

Where a contract is signed by the parties thereto, and a third person, not a party to the contract, appends his name under the other signatures, preceded by the words, "I hereby consent to the above contract," he is not bound beyond his engagement so expressed. *The Henry O. Shepard Co. v. Freeman*, 40 M 144, 155, 105 P 484.

Whether a contract is bilateral or unilateral depends upon the intention of the parties, and, when in writing, the intention is to be ascertained from the writing alone, if possible; otherwise the usual rules of construction must be applied to ascertain it. *Wandell v. Johnson*, 71 M 73, 76, 227 P 58.

In interpreting a written contract, the intention of the parties must be ascertained from the writing alone, if possible, and resort to extrinsic evidence in aid of interpretation may be had only when the contract appears on its face to be ambiguous or uncertain. *Hill Cattle Corporation v. Killorn et al.*, 79 M 327, 341, 256 P 497.

Reference to Other Contracts

A contract will not be held to incorporate stipulations embodied in another contract save in so far as the same are specifically set forth or identified by reference. *State Bank of Darby v. Pew et al.*, 59 M 144, 155, 195 P 852.

When Parol Evidence Admissible

Where a brief memorandum of sale of an automobile did not contain all the terms of the agreement between the buyer and seller and was uncertain and ambiguous, parol evidence in aid of its interpretation was admissible. *Sutton v. Masterson*, 86 M 530, 284 P 264.

When Parol Evidence Not Admissible

Where parties to a contract have expressed themselves in the instrument clearly and without ambiguity, it can readily be found afterward, merely by referring to the instrument, whether either party had committed a breach; but where the instrument contains terms or expressions

of doubtful import, the necessity for interpretation arises before the instrument can be resorted to for ascertaining the fact of breach. *Lehrkind v. McDonnell*, 51 M 343, 353, 153 P 1012.

In an action for damages for breach of a clause of a written contract of sale of a threshing-machine warranting it as being as well made, of good material, and that with proper use and management it would do as good work as any other machine of the same size manufactured for the like purpose, evidence of statements made by defendant's agent in making the sale that it would thresh and clean alfalfa as well as any other machine of the same size, etc., was properly rejected as an attempt to vary the terms of the written instrument by parol. *Rowe v. Emerson-Brantingham Co.*, 61 M 73, 78, 201 P 316.

In the absence of fraud, an unconditional written contract of purchase of building material presumably embraced the whole agreement of the parties, and therefore evidence of an oral understanding to the effect that it should not become binding until the architect in charge had approved the materials was inadmissible. *Wheeler v. James*, 70 M 37, 43, 223 P 900.

Held, that the clear meaning of a provision of a contract of employment of defendants as managers of ranch property to the effect that their compensation for a year's services should be one-half of the total receipts from the sales of produce, the increase of livestock, etc., less certain deductions, in the light of other provisions, was that their one-half interest in the total receipts was chargeable with the total operating expenses in computing their compensations, and that therefore oral testimony as to prior or contemporaneous negotiations, merged in the contract was properly excluded. *Hill Cattle Corporation v. Killorn et al.*, 79 M 327, 341, 256 P 497.

Where One Party is Allowed to Introduce Parol Evidence, the Other May Also on the Same Subject

Where one party to an action on a written contract is permitted to introduce evidence of preceding oral negotiations leading up to the making of the writing, thus varying its terms, his opponent may properly give oral testimony as to the same matter, over an objection that the testimony offered tends to contradict the writing. *Peterson v. Nelson*, 77 M 539, 550, 252 P 368.

References

Cited or applied as section 2204, Civil Code, in *Riddell v. Peck-Williamson H. & V. Co.*, 27 M 44, 57, 69 P 241; *Bullard v. Smith*, 28 M 387, 399, 72 P 761; *East-erly v. Jackson*, 29 M 496, 502, 75 P 357; as section 5028, Revised Codes, in *Frank*

v. Butte & Boulder Min. & Lbr. Co., 48 M 83, 89, 135 P 904; Knapp v. Andrus, 56 M 37, 41, 180 P 908; Comerford v. United States F. & G. Co., 59 M 243, 259, 196 P 984; Emerson-Brantingham I. Co. v. Raugstad, 65 M 297, 304, 211 P 305; General F. E. Co. v. Northwestern A. S. Co., 65 M 371, 211 P 308; Humble v. St. John et al., 72 M 519, 522, 234 P 475; Union Cent. Life Ins. Co. v. Jensen, 74 M 70, 76, 237 P 518; Hochsprung v. Stevenson, 82 M 222, 234, 266 P 406; Roecher v. Commercial National Bank, 87 M 570, 582, 289

P 388; J. Neils Lumber Co. v. Farmers Lumber Co., 88 M 392, 396, 293 P 288; New Home Sewing M. Co. v. Songer et al., 91 M 127, 7 P 2d 238; Brown v. Homestake Exploration Co., 98 M 305, 39 P 2d 168; Hardenburgh v. Hardenburgh, 115 M 469, 479, 146 P 2d 151; White v. Saby, 127 M 241, 260 P 2d 1116, 1118.

Collateral References

Contracts⇒147(2), 150.
17 C.J.S. Contracts § 296.

13-706. (7531) Writing — when disregarded. When, through fraud, mistake, or accident, a written contract fails to express the real intention of the parties, such intention is to be regarded, and the erroneous parts of the writing disregarded.

History: En. Sec. 2205, Civ. C. 1895; re-en. Sec. 5029, Rev. C. 1907; re-en. Sec. 7531, R. C. M. 1921. Cal. Civ. C. Sec. 1640. Field Civ. C. Sec. 805.

Fraud

The parol evidence rule under which, in civil actions, oral testimony is inadmissible to vary the terms of a written instrument has no application in a criminal case involving fraud, where the state seeks by parol testimony to negative the existence of an alleged contract. State v. Lund, 93 M 169, 185, 18 P 2d 603.

Power to Reform Where Mistake Exists

Before equity will intervene to correct an alleged mistake in a written instrument, the evidence of the mistake must be clear, convincing and satisfactory. Humble v. St. John et al., 72 M 519, 522, 234 P 475.

Section 17-901, provides for the reformation of instruments on the ground of the mutual mistake of the parties. This section declares that when through mistake a written contract fails to express the real

intention of the parties, such intention is to be regarded and the erroneous part of the writing disregarded. Held, in an action of the character of the above, that in the nature of things a voluntary conveyance is unilateral and, therefore, lacks in mutuality, but that a court of equity under its inherent power and this section, may grant reformation of a deed evidencing such a conveyance even though the mistake was not mutual. Laundreville v. Mero et al., 86 M 43, 56, 281 P 749.

References

Cited or applied as section 5029, Revised Codes, in Hennessy v. Holmes, 46 M 89, 96, 125 P 132; Whittaker v. United States Fidelity & Guaranty Co., 300 F 129; Shelley v. Normile, 109 M 117, 125, 94 P 2d 206; Doheny v. United States Fidelity & Guaranty Co., 34 F Supp 888, 891.

Collateral References

Contracts⇒147(2), 152, 157 and other particular topics.
17 C.J.S. Contracts §§ 296, 300, 308.

13-707. (7532) Effect to be given to every part of contract. The whole of a contract is to be taken together, so as to give effect to every part, if reasonably practicable, each clause helping to interpret the other.

History: En. Sec. 2206, Civ. C. 1895; re-en. Sec. 5030, Rev. C. 1907; re-en. Sec. 7532, R. C. M. 1921. Cal. Civ. C. Sec. 1641. Field Civ. C. Sec. 806.

Operation and Effect

The intention of the parties to a deed is to be ascertained from the language thereof, viewed in its entirety, and not as it is presented in particular sentences or paragraphs. R. M. Cobban Realty Co. v. Donlan, 51 M 58, 65, 149 P 484.

In the construction of a contract the intention of the parties at the time of contracting must be pursued if possible, which intention must be gathered from the entire instrument and not from particular

words or phrases or disjointed parts of it and in the ascertainment of such intention the subject matter of the contract and the purposes of its execution are material. State v. Rosman et al., 84 M 207, 217, 274 P 850.

In the construction of a contract its language is to be resorted to in the first instance, but the conclusion to be reached depends, not upon the verbal clarity of the particular sentences or paragraphs, but upon the view to be taken of it in its entirety. Roecher v. Commercial National Bank, 87 M 570, 582, 289 P 388.

Under this section, farm lease contracts are to be read as a whole and not by particular paragraphs or sentences, and,

under sections 13-715 and 13-720, any ambiguities in such a lease should be construed against the lessor. Held, in the instant case that tenant entitled to compensation for the summer-fallowing he did during the last year of his holding where he did not renew and the lease was given to another; and where lease required 80 acres to be summer-fallowed, but tenant found only 74.5 tillable land, he substantially complied. *Letz v. Lampen*, 110 M 477, 482, 104 P 2d 4.

References

Cited or applied as section 2206, Civil Code, in *Ackley v. Phenix Ins. Co.*, 25 M 272, 280, 64 P 665; *Bickford v. Kirwin*, 30 M 1, 7, 75 P 518; as section 5030, Revised Codes, in *Lyon v. Dailey Copper M. & S. Co.*, 46 M 108, 120, 126 P 931; *Brockway v. Blair*, 53 M 531, 536, 165 P 455; *Knapp v. Andrus*, 56 M 37, 41, 180 P 908; *Wing et al. v. Brasher*, 59 M 10, 20, 194 P 1106; *State Bank of Darby v. Pew et al.*,

59 M 144, 155, 195 P 852; *Esselstyn v. Meyer & Chapman State Bk.*, 63 M 461, 473, 208 P 910; *Emerson-Brantingham I. Co. v. Raugstad*, 65 M 297, 304, 211 P 305; *General F. E. Co. v. Northwestern A. S. Co.*, 65 M 371, 211 P 308; *Kasun v. Todevich*, 71 M 315, 319, 229 P 714; *Union Cent. Life Ins. Co. v. Jensen*, 74 M 70, 76, 237 P 518; *Brown v. Homestake Exploration Co.*, 98 M 305, 39 P 2d 168; *Snider v. Carmichael*, 102 M 387, 409, 58 P 2d 1004; *Norwegian Lutheran Church of America v. Armstrong*, 112 M 528, 531, 118 P 2d 380; *Hardenburgh v. Hardenburgh*, 115 M 469, 479, 146 P 2d 151; *Van De Putte v. Texas Pacific Coal & Oil Co.*, 35 F Supp 794, 797; *Davis v. Park Securities Corp.*, 117 M 393, 399, 159 P 2d 323.

Collateral References

Contracts §§143, 147(3) and other particular topics.

17 C.J.S. *Contracts* §§ 294, 297.

13-708. (7533) Several contracts—when taken together. Several contracts relating to the same matters, between the same parties, and made as parts of substantially one transaction, are to be taken together.

History: En. Sec. 2207, Civ. C. 1895; re-en. Sec. 5031, Rev. C. 1907; re-en. Sec. 7533, R. C. M. 1921. Cal. Civ. C. Sec. 1642. Field Civ. C. Sec. 807.

Contract to Purchase and Quitclaim Deed

Where contract to purchase land, being in effect an option to purchase, and a quitclaim deed to the same land were made at the same time, the deed and contract constituted a single transaction and must be construed together. *Ryan v. Bloom*, 120 M 443, 186 P 2d 879, 883.

Operation in General

Where a note sued on was given in consideration of the written contracts of the payee, made a few days before the date of the note, that he would, on or before a certain day, purchase or procure a purchaser for the maker's interests in certain mines at a stated price, and that, if he failed so to do, the maker would be absolved from all liability to convey such interests, these contracts were admissible under this section, as relating to the same matters as the note in suit between the same parties, and as parts of substantially one transaction. *Talbott v. Heinze*, 25 M 4, 8, 63 P 624.

Where a note is secured by a mortgage of even date the note and mortgage were parts of the same contract under this section, which must be read and construed together, thus rendering the fulfillment of the entire contract uncertain, and the note

non-negotiable. *Cornish v. Woolverton*, 32 M 456, 470, 81 P 4.

Where a note, deed, and defeasance were all executed at the same time, had reference to the same subject-matter, and were a part of the same transaction, the deed being intended as a mortgage to secure the note, the three instruments should be construed as one as provided in this section. *Bartels v. Davis*, 34 M 285, 290, 85 P 1027.

A bond, given to secure the payment of rent, which was signed after the lease of the property had been executed, was not nudum pactum, where both instruments were executed on the same day, and where the bond referred to and made the latter instrument a part of it. They must be construed as having been executed contemporaneously, and as amounting to one instrument. *Dodd v. Vucovich*, 38 M 188, 191, 99 P 296.

Where different writings have relation to the same subject-matter, the last referring to the others, the intention of the parties must be ascertained by construing all of the writings together as one entire contract. *Lyon v. Dailey Copper M. & S. Co.*, 46 M 108, 120, 126 P 931.

Stipulations in a mortgage are to be construed as entering into and becoming a part of the note secured thereby, and if the two are to be taken together, they must be considered together for all purposes. *Union Bank & Trust Co. v. Himelbauer*, 56 M 82, 90, 181 P 332.

Held, under this section, that a deed

made upon a condition subsequent imposed by a separate writing, under the terms of which the grantee obligated herself to make a stipulated monthly payment to a third person, with reversion in favor of the grantor, were part of and constituted the same transaction, regardless of whether they were executed at the same time or not. *Smith v. Hoffman*, 56 M 299, 184 P 842.

Several contracts relating to the same matter and made as parts of substantially the same transaction must be taken together for all purposes. *United States Nat. Bank v. Chappell*, 71 M 553, 568, 230 P 1084.

Under this section, providing that several contracts relating to the same matter, between the same parties, and made as parts of substantially one transaction, must be taken together, stipulations embodied in a mortgage become a part of the note securing which it is given even though the note contains no mention of the mortgage. *Vande Veegaete v. Vande Veegaete*, 75 M 52, 57, 243 P 1082.

Where preliminary agreements culminating in a deed to mortgaged property by the mortgagor to the mortgagee were made in consideration of the execution and delivery of the deed, the several transactions had at the same time must be taken together and considered as though all the promises, agreements and obligations of the parties were contained in a single instrument signed by all the parties; hence the fact that the wife of the mortgagor did not sign one of the agreements did not render the deed invalid, she having been a party to the entire transaction, taking part therein with full knowledge of all the facts. *Cooper v. Goble et al.*, 77 M 580, 589, 252 P 362.

In construing several contracts relating to the same subject matter and constituting substantially parts of one transaction (application for loan from a building and loan association, note and mortgage), the intention of the parties must be gathered from the writings, read together, reviewing all their terms, since one clause may modify, limit or illuminate another. *United States Bldg. etc. Assn. v. Gardiner*, 87 M 586, 591, 289 P 555.

Under this section, all documents signed by the parties to a contract of a sale of real property, such as promissory note, mortgage, etc., are to be considered as parts of one transaction and construed together. *Adamezik et al. v. McCauley et al.*, 89 M 27, 35, 297 P 486.

Under this section, declaring that several contracts relating to the same matter and made as parts of substantially one transaction must in their interpretation be taken together, in a mortgage foreclosure suit the mortgagor's note, the mortgage

and an assignment of rents and profits derived from the property during the time the indebtedness remained unpaid, were constituent parts of one transaction, to be considered together for all purposes. *United States B. & L. Assn. v. Burns*, 90 M 402, 416, 4 P 2d 703.

Where two writings, one a contract of sale of livestock, and the other a letter to the buyer, written by the agent of the seller, referring to the time of payment, were delivered at the same time, they were properly considered together in an action to recover the purchase price, irrespective of the fact that the letter was signed only by plaintiff's agent; the letter having constituted an offer with reference to the time of payment, which was accepted by defendant buyer, relied and acted upon by the latter, it constituted a part of the contract of sale. *Orem v. Hansen Packing Co.*, 91 M 222, 229, 7 P 2d 546.

Reference to Another Contract

A contract will not be held to incorporate stipulations embodied in another contract save in so far as the same are specifically set forth or identified by reference. *State Bank of Darby v. Pew et al.*, 59 M 144, 151, 195 P 852.

When Construed Separately

Where a contractor had obligated himself to construct a water-tight basement in a building he had undertaken to erect for plaintiff by a bond separate and distinct from and without reference to the building contract or the plans and specifications furnished by plaintiff's architect, the bond being given about a month after execution of the building contract and a week later than the bond accompanying the latter contract, he was in no position, in an action on such special bond, to defend on the ground that its provisions should be construed with reference to the building contract, and that having followed the plans and specifications, he was relieved from liability thereunder. *State Bank of Darby v. Pew et al.*, 59 M 144, 151, 195 P 852.

An application to an insurance company for a loan "payable at the home office" of the company, requesting interest coupons to be sent to a certain bank "and at my risk until payments made are actually received by the company at its home office," signed by the applicant, was not a contract within the meaning of this section, providing that several contracts relating to the same matter are to be taken together, and therefore refusal to admit it to be considered in connection with the note and mortgage executed pursuant to the application was proper. *Dehnert et al. v. Union Cent. Life Ins. Co.*, 74 M 104, 110, 239 P 773.

The rule that more than one contract relating to the same subject matter, between the same parties, and made as parts of substantially one transaction, must be construed together has no application in an action on a surety bond conditioned to pay the amount found to be due under the terms of a contract for the sale of state timber if the buyer failed to pay, the parties not being the same and the obligations thereunder being entirely separate and distinct. *State v. American Surety Co. of New York*, 78 M 504, 515, 255 P 1063.

Where Contracts Read Together Though Parties Not Same

The rule that where several instruments are made at the same time in relation to same subject matter they may be read together as one instrument and recitals in one may be limited by reference to the other may obtain even when parties are not the same, if the several instruments

were known to all parties and were delivered at the same time to accomplish an agreed purpose. *Doheny v. United States Fidelity & Guaranty Co.*, 34 F Supp 888, 890, 123 F 2d 746.

References

Cited or applied as section 5031, Revised Codes, in *Wright Land & Investment Co. v. Even et al.*, 57 M 1, 186 P 681; *Leigland v. Rundle L. & A. Co.*, 64 M 154, 168, 208 P 1075; *Peterson v. Nelson*, 77 M 539, 549, 252 P 368; *Union Electric Co. v. Lovell Livestock Co.*, 101 M 450, 460, 54 P 2d 112; *Hodgkiss v. Northland Petroleum Consolidated*, 104 M 328, 337, 57 P 2d 811.

Collateral References

Contracts—164 and other particular topics.

17 C.J.S. Contracts § 298.

12 Am. Jur. 816, Contracts, § 269.

13-709. (7534) Interpretation in favor of contract. A contract must receive such an interpretation as will make it lawful, operative, definite, reasonable, and capable of being carried into effect, if it can be done, without violating the intention of the parties.

History: En. Sec. 2208, Civ. C. 1895; re-en. Sec. 5032, Rev. C. 1907; re-en. Sec. 7534, R. C. M. 1921. Cal. Civ. C. Sec. 1643. Field Civ. C. Sec. 808.

Operation and Effect

If of two constructions one will render the contract in question valid and the other void, the former should be adopted, if it can be done without doing violence to the ascertained intention of the parties. *Finley v. School District No. 1*, 51 M 411, 415, 153 P 1010.

Of two constructions of a contract, one of which will render it valid and the other void, the former will be adopted if it can be done without violence to the ascertained intention of the parties. *Linse v. Zastrow*, 63 M 241, 246, 207 P 119.

To construe the guaranty as running to the bank only, when in fact the bank did not have any interest in the note or account at the time the guaranty was executed, would render the guaranty meaningless, and such a construction will not be adopted, unless it is compelled by its very terms themselves. *Schauer v. Morgan et al.*, 67 M 455, 467, 216 P 347.

A contract must receive such an interpretation as will make it lawful, operative, definite, reasonable and capable of being carried into effect; it may be explained by reference to the circumstances under which it was made and the matter to which it relates, and however broad may be its terms, it extends only to those things concerning which it appears that the parties intended to contract, particular clauses being subordinate to its general

intent. *Custer v. Missoula Public Service Co.*, 91 M 136, 143, 6 P 2d 131.

A telegram, "Wire lowest price you will sell the 7,000 S. & W. yearling ewes," and an answering telegram, "Lowest price on S. & W. yearling ewes eleven fifty this subject to immediate acceptance," held, together with custom and usage and sections 13-709, 13-712 and 13-713, to evidence a complete contract for the sale of the sheep, where defendant's offer was accepted within 24 hours, as against an objection that there was no meeting of the minds of the parties upon the price to be paid for the sheep, in that price could only be determined upon delivery, and that the offer was not accepted immediately. *Story v. Stanfield*, 275 Fed 401.

References

Cited or applied as section 5032, Revised Codes, in *Lawson v. Cobban*, 38 M 138, 140, 99 P 128; *The Henry O. Shepard Co. v. Freeman*, 40 M 144, 155, 105 P 484; *State Bank of Darby v. Pew et al.*, 59 M 144, 155, 195 P 852; *McDonald et al. v. McNinch et al.*, 63 M 308, 313, 206 P 1096; *Hinerman v. Baldwin et al.*, 67 M 417, 433, 215 P 1103; *Wandell v. Johnson*, 71 M 73, 77, 227 P 58; *Kasun v. Todevich*, 71 M 315, 319, 229 P 714; *Union Cent. Life Ins. Co. v. Jensen*, 74 M 70, 76, 237 P 518; *Capital F. Corp. v. Metropolitan L. I. Co.*, 75 M 460, 465, 243 P 1061; *Roecher v. Commercial National Bank*, 87 M 570, 582, 289 P 388; *Whittaker v. United States Fidelity & Guaranty Co.*, 300 Fed 129; *Shelley v. Normile*, 109 M 117, 126, 94 P 2d 206; *Norwegian Lutheran Church of America v.*

Armstrong, 112 M 528, 531, 118 P 2d 380; Davis v. Park Securities Corp., 117 M 393, 399, 159 P 2d 323; Hart v. Barron, 122 M 350, 240 P 2d 797, 807.

Collateral References

Contracts 152-154 and other particular topics.

13-710. (7535) Words to be understood in usual sense. The words of a contract are to be understood in their ordinary and popular sense, rather than according to their strict legal meaning, unless used by the parties in a technical sense, or unless a special meaning is given to them by usage, in which case the latter must be followed.

History: En. Sec. 2209, Civ. C. 1895; re-en. Sec. 5033, Rev. C. 1907; re-en. Sec. 7535, R. C. M. 1921. Cal. Civ. C. Sec. 1644. Field Civ. C. Sec. 809.

"Commence Drilling Operations"

In an action to have an oil and gas lease forfeited for failure of the lessee to "commence drilling operations for oil" within the time specified in the lease, held that the quoted phrase meant the commencement of actual drilling and not the commencement of preliminary work necessary to such drilling; that evidence that the well was not "spudded in" was sufficient to make out a prima facie case, and that therefore the granting of a nonsuit was error. *Solberg v. Sunburst Oil & Gas Co. et al.*, 73 M 94, 102, 235 P 761.

"Connected"

Where, in an action to recover the amount of an insurance policy, it appeared that the assured had represented in his application for the policy that he was not in any way connected with the manufacture or sale of spirituous liquors, the word "connected" must be presumed to have been used in its popular sense, involving the idea of permanency. *Collins v. Metropolitan Life Ins. Co.*, 32 M 329, 337, 80 P 609, 1092.

"Finance Plan"

In an action to recover the purchase price of merchandise (sewing machines) claimed to have been sold to defendants but alleged by them to have been delivered on consignment, plaintiff introduced in evidence a printed order for the goods obtained by its agent, which under the subject "Terms" contained the words "Finance Plan." Defendants, contending that the contract did not contain all the terms agreed upon and that the words "Finance Plan" rendered the contract ambiguous, were permitted to introduce parol evidence to explain the term. Held, that the evidence was properly admitted, in that the meaning of the term is not so free from doubt that it may be said, as a matter of law, that it furnishes its own inter-

17 C.J.S. Contracts § 300 et seq.
12 Am. Jur. 758, Contracts, § 236.

Requisites as to definiteness of agreement to pay employee share of profits.
18 ALR 2d 211.

pretation. *New Home Sewing M. Co. v. Songer et al.*, 91 M 127, 7 P 2d 238.

"Firm"

The word "firm" was used in the will of a testator as an equivalent for "Gans & Klein," and had no technical reference to the copartnership of Gans & Klein. In re Klein's Estate, 35 M 185, 205, 88 P 798.

Operation and Effect

Where there are no technical words in a contract, the words must be given their ordinary and popular meaning. *Frank v. Butte & Boulder Mining & Lumber Co.*, 48 M 83, 90, 135 P 904.

"Out of the First Earnings of Its Business, After Deducting Running Expenses"

A written contract that a loan to a corporation shall be repaid monthly "out of the first earnings of its business, after deducting running expenses" does not create a general liability on the part of the company, to be paid after a reasonable time, but makes the indebtedness payable out of a special fund, consisting of the net proceeds, as rapidly as they accumulate. *Frank v. Butte & Boulder Mining & Lumber Co.*, 48 M 83, 90, 135 P 904.

"Spudding In"

The terms "spudding in" of an oil well as understood by oil operators, and "commence drilling operations," used in an oil lease, denote the first movement of the drill in penetrating the ground. *Solberg v. Sunburst Oil & Gas Co. et al.*, 73 M 94, 102, 235 P 761.

"Vacation"

Under a partnership providing for a six weeks' vacation for each member of the firm without deduction from the income, held that "vacation" means absence from any cause and therefore included absence on account of sickness. *Kettlekamp et al. v. Watkins et al.*, 70 M 391, 397, 225 P 1003.

References

Cited or applied as section 2209, Civil

Code, in *Cambers v. Lowry*, 21 M 478, 480, 54 P 816; *Harris v. Root*, 28 M 159, 166, 72 P 429; *Hill Cattle Corporation v. Kilborn et al.*, 79 M 327, 341, 256 P 497; *Sutton v. Masterson*, 86 M 530, 284 P 264; *Brown v. Homestake Exploration Co.*, 98

M 305, 39 P 2d 168; *McDonald v. Northern Benefit Association*, 113 M 595, 606, 131 P 2d 479; *Van De Putte v. Texas Pacific Coal & Oil Co.*, 35 F Supp 794, 797.

13-711. (7536) Technical words. Technical words are to be interpreted as usually understood by persons in the profession or business to which they relate, unless clearly used in a different sense.

History: En. Sec. 2210, Civ. C. 1895; re-en. Sec. 5034, Rev. C. 1907; re-en. Sec. 7536, R. C. M. 1921. Cal. Civ. C. Sec. 1645. Field Civ. C. Sec. 810.

Operation and Effect

Witnesses who are qualified may testify as to the meaning of the following words in a mining lease: "There shall be no ores stoped, except at the three hundred foot level, and all ores shall be extracted from the drifts, raises, or winzes." *Cambers v. Lowry*, 21 M 478, 480, 54 P 816.

A court cannot take judicial notice of

the meaning of technical words; such words are to be interpreted as usually understood by persons in the profession or business to which they relate, unless used in a clearly different sense than the technical one. *Lehrkind v. McDonald*, 51 M 343, 353, 153 P 1012.

References

Davis v. Park Securities Corp., 117 M 393, 400, 159 P 2d 323.

Collateral References

12 Am. Jur. 763, Contracts, § 237.

13-712. (7537) Law of place. A contract is to be interpreted according to the law and usage of the place where it is to be performed; or, if it does not indicate a place of performance, according to the law and usage of the place where it is made.

History: En. Sec. 2211, Civ. C. 1895; re-en. Sec. 5035, Rev. C. 1907; re-en. Sec. 7537, R. C. M. 1921. Cal. Civ. C. Sec. 1646. Field Civ. C. Sec. 811.

Operation and Effect

The lease was not void for failing to designate the time and place for a division of the crops provided for, since under this section, any uncertainty in that respect was determinable by the custom or usage observed in the vicinity in the light of the surrounding facts and circumstances bearing upon the transaction. *McDonald et al. v. McNinch et al.*, 63 M 308, 314, 206 P 1096.

A contract of life insurance made in this state between one of its residents and a foreign company is governed by the laws of this state. *Capital F. Corp. v. Metropolitan L. I. Co.*, 75 M 460, 464, 243 P 1061.

Id. The validity of an assignment must be determined by the law of the place of assignment.

A telegram, "Wire lowest price you will

sell the 7,000 S. & W. yearling ewes," and an answering telegram, "Lowest price on S. & W. yearling ewes eleven fifty this subject to immediate acceptance," held, together with custom and usage and section 13-709, this section and 13-713, to evidence a complete contract for the sale of the sheep, where defendant's offer was accepted within 24 hours, as against an objection that there was no meeting of the minds of the parties upon the price to be paid for the sheep, in that price could only be determined upon delivery, and that the offer was not accepted immediately. *Story v. Stanfield*, 275 Fed 401.

References

Hardenburgh v. Hardenburgh, 115 M 469, 479, 146 P 2d 151; *Hart v. Barron*, 122 M 350, 204 P 2d 797, 807.

Collateral References

Contracts 144 and other particular topics.

17 C.J.S. Contracts § 12.

13-713. (7538) Contracts explained by circumstances. A contract may be explained by reference to the circumstances under which it was made and the matter to which it relates.

History: En. Sec. 2212, Civ. C. 1895; re-en. Sec. 5036, Rev. C. 1907; re-en. Sec. 7538, R. C. M. 1921. Cal. Civ. C. Sec. 1647. Field Civ. C. Sec. 812.

Operation and Effect

Where there is ambiguity in a contract, it is open, under this section and section 13-702, to interpretation, by the aid of evi-

dence aliunde, so as to give effect to the mutual intention of the parties to it at the time it was made. *Butte Water Co. v. City of Butte*, 48 M 386, 397, 138 P 195.

Evidence explanatory of the circumstances leading up to the making of a written contract of sale, as well as of the conversation had between the defendant and plaintiff's agent at the time it was made, is admissible under this section. *National Cash Register Co. v. Wall*, 58 M 60, 62, 190 P 135.

The lease was not void for failing to designate the time and place for a division of the crops provided for, since under the preceding section, any uncertainty in that respect was determinable by the custom or usage observed in the vicinity in the light of the surrounding facts and circumstances bearing upon the transaction. *McDonald et al. v. McNinch et al.*, 63 M 308, 315, 206 P 1096.

While in the interpretation of a contract, the language of which is ambiguous and uncertain, the attending circumstances may be examined to determine its proper construction, this may not be done where its language is clear and unambiguous. *Berne v. Stevens*, 67 M 254, 259, 215 P 803.

In an action by the payee of a promissory note against the maker, it was a valid defense that the note was delivered upon the condition that the maker should not be held liable thereon, pursuant to a written agreement between the parties, and in support of the plea evidence of the circumstances leading up to the making of the agreement and resulting in the delivery of the note, was admissible. *United States Nat. Bank v. Chappell*, 71 M 553, 566, 230 P 1084.

The minutes of a meeting of the board of directors of a corporation attested as correct by its president, plaintiff in an action on the corporation's note against indorsers thereon, acquired by plaintiff after maturity, tending to show that plaintiff knew that when the indorsements were made defendants indorsed as representatives of various farmers' associations and not in their individual capacities, were admissible in support of the defense disclaiming personal responsibility for its payment. *Anderson v. Border et al.*, 75 M 516, 529, 244 P 494.

A contract must receive such an interpretation as will make it lawful, operative, definite, reasonable and capable of being carried into effect; it may be explained by reference to the circumstances under which it was made and the matter to which it relates, and however broad may be its terms, it extends only to those things concerning which it appears that the parties intended to contract, particular clauses being subordinate to its general

intent. *Custer v. Missoula Public Service Co.*, 91 M 136, 143, 6 P 2d 131.

A telegram, "Wire lowest price you will sell the 7,000 S. & W. yearling ewes," and an answering telegram, "Lowest price on S. & W. yearling ewes eleven fifty this subject to immediate acceptance," held, together with custom and usage and sections 13-709 and 13-712 and this section, to evidence a complete contract for the sale of the sheep, where defendant's offer was accepted within 24 hours, as against an objection that there was no meeting of the minds of the parties upon the price to be paid for the sheep, in that price could only be determined upon delivery, and that the offer was not accepted immediately. *Story v. Stanfield*, 275 Fed 401.

Where there is an uncertainty in a contract, it is to be interpreted most strongly against the person who caused the uncertainty to exist. Thus where there was a question as to what was intended to be improvements as contemplated by the \$1200 rent provisions of the lease and both the lessor and the lessee gave testimony, it was error for the court to disregard such testimony. Consideration of the improvements made by the lessee should be given by the lower court and the value of these items offset against the rents contemplated. *Hempstead v. Allen*, 126 M 578, 255 P 2d 342, 346.

References

Cited or applied as section 5036, Revised Codes, in *Lawson v. Cobban*, 38 M 138, 141, 99 P 128; *Lyon v. Bailey Copper M. & S. Co.*, 46 M 108, 120, 126 P 931; *Lehrkind v. McDonnell*, 51 M 343, 353, 153 P 1012; *Brookway v. Blair*, 53 M 531, 536, 165 P 455; *State Bank of Darby v. Pew et al.*, 59 M 144, 155, 195 P 852; *Emerson Brantingham I. Co. v. Raugstad*, 65 M 297, 304, 211 P 305; *General F. E. Co. v. Northwestern A. S. Co.*, 65 M 371, 211 P 308; *Peterson v. Nelson*, 77 M 539, 252 P 368; *Musselshell Valley F. & L. Co. v. Cooley*, 86 M 276, 293, 283 P 213; *Brown v. Homestake Exploration Co.*, 98 M 305, 39 P 2d 168; *Shelley v. Normile*, 109 M 117, 126, 94 P 2d 206; *Letz v. Lampen*, 110 M 477, 480, 104 P 2d 4; *Hardenburgh v. Hardenburgh*, 115 M 469, 479, 146 P 2d 151; *Van De Putte v. Texas Pacific Coal & Oil Co.*, 35 F Supp 794, 797; *Doheny v. United States Fidelity & Guaranty Co.*, 34 F Supp 888, 891; *Lewis v. Peterson*, 127 M 474, 267 P 2d 127, 128.

Collateral References

Contracts—169 and other particular topics.

17 C.J.S. Contracts § 321.

12 Am. Jur. 784, Contracts, §§ 247, 248.

13-714. (7539) Contract restricted to its evident object. However broad may be the terms of a contract, it extends only to those things concerning which it appears that the parties intended to contract.

History: En. Sec. 2213, Civ. C. 1895; re-en. Sec. 5037, Rev. C. 1907; re-en. Sec. 7539, R. C. M. 1921. Cal. Civ. C. Sec. 1648. Field Civ. C. Sec. 813.

Operation and Effect

A contract must receive such an interpretation as will make it lawful, operative, definite, reasonable and capable of being carried into effect; it may be explained by reference to the circumstances under which it was made and the matter to which it relates, and however broad may be its terms, it extends only to those things concerning which it appears that the parties intended to contract, particular clauses being subordinate to its general intent. *Custer v. Missoula Public Service Co.*, 91 M 136, 143, 6 P 2d 131.

Where plaintiff and defendant entered into an oral contract whereby plaintiff was to harvest and haul defendant's crops upon notice by defendant with five combines, and after notice plaintiff delayed in harvesting the wheat and then only started with one combine, and as a result standing wheat was damaged by storm, the defendant on counterclaim could not recover for such loss since the court held that the parties did not contemplate that the plaintiff was to be an "insurer against

acts of God." *Richardson v. Crone*, 127 M 200, 258 P 2d 970. (See, however, dissenting opinion in which the judge feels that the evidence did show that that was contemplated, 127 M 200, 258 P 2d 970, 973.)

References

Cited or applied as section 5037, Revised Codes, in *Butte Water Co. v. City of Butte*, 48 M 386, 397, 138 P 195; *Sutherland v. Green*, 49 M 379, 383, 142 P 636; *State Bank of Darby v. Pew et al.*, 59 M 144, 155, 195 P 852; *Comerford v. United States F. & G. Co.*, 59 M 243, 259, 196 P 984; *Emerson-Brantingham I. Co. v. Raugstad*, 65 M 297, 304, 211 P 305; *General F. E. Co. v. Northwestern A. S. Co.*, 65 M 371, 211 P 308; *Solberg v. Sunburst Oil & Gas Co. et al.*, 73 M 94, 102, 235 P 761; *Peterson v. Nelson*, 77 M 539, 252 P 368; *American Surety Co. v. Butler et al.*, 86 M 584, 592, 284 P 1011; *Norwegian Lutheran Church of America v. Armstrong*, 112 M 528, 532, 118 P 2d 380; *Hardenburgh v. Hardenburgh*, 115 M 469, 480, 146 P 2d 151; *Hart v. Barron*, 122 M 350, 204 P 2d 797, 807.

Collateral References

Contracts 147(1), 189.
17 C.J.S. *Contracts* §§ 295, 327.

13-715. (7540) Interpretation in sense in which promisor believed promisee to rely. If the terms of a promise are in any respect ambiguous or uncertain, it must be interpreted in the sense in which the promisor believed, at the time of making it, that the promisee understood it.

History: En. Sec. 2214, Civ. C. 1895; re-en. Sec. 5038, Rev. C. 1907; re-en. Sec. 7540, R. C. M. 1921. Cal. Civ. C. Sec. 1649. Field Civ. C. Sec. 814.

Operation and Effect

Where the attendant facts and circumstances in the making of an agreement are resorted to as an aid to an understanding of it, no greater burden rests upon the promisor than to show by a preponderance of the evidence that the promisee understood it as the promisor believed he understood it. *Blankenship v. Decker*, 34 M 292, 300, 85 P 1035.

Where a written contract appears on its face to be uncertain and ambiguous, resort to parol testimony may be had in aid of its interpretation; and under that rule, held, in an action for breach of a contract of lease of oil and gas lands, providing, *inter alia*, for the drilling of exploratory wells "to such number and extent as the premises will admit of," thus rendering the contract ambiguous as to the number

of wells to be drilled, that parol testimony was admissible to show the parties' understanding of the clause when the contract was entered into. *Brown v. Homestake Exploration Co.*, 98 M 305, 39 P 2d 168.

Under section 13-707, farm lease contracts are to be read as a whole and not by particular paragraphs or sentences, and, under this section and section 13-720, any ambiguities in such a lease should be construed against the lessor. Held, in the instant case that a tenant was entitled to compensation for the summer-fallowing he did during the last year of his holding, where he did not renew and the lease was given to another; and where lease required 80 acres to be summer-fallowed, but tenant found only 74.5 tillable land, he substantially complied (sec. 49-123). *Letz v. Lampen*, 110 M 477, 482, 104 P 2d 4.

Where the defendant agreed to assign a specific oil lease and then described land held by him covered by other leases, received the consideration therefor but never completed the assignment, the court

was warranted in finding that it called for a transfer of interest of all the lands described in it, since the evidence disclosed that is what the plaintiff thought was being transferred. *Bull Creek Oil & Gas Development v. Bethel*, 127 M 222, 258 P 2d 960, 963.

References

Cited or applied as section 5038, Revised Codes, in *Lyon v. Dailey Copper M. & S. Co.*, 46 M 108, 120, 126 P 931; *Brockway v. Blair*, 53 M 531, 536, 165 P 455;

Schauer v. Morgan et al., 67 M 455, 467, 216 P 347; *New Home Sewing M. Co. v. Songer et al.*, 91 M 127, 135, 7 P 2d 238; *Shelley v. Normile*, 109 M 117, 125, 94 P 2d 206; *Hardenburgh v. Hardenburgh*, 115 M 469, 479, 146 P 2d 151; *Van De Putte v. Texas Pacific Coal & Oil Co.*, 35 F Supp 794, 797; *Davis v. Park Securities Corp.*, 117 M 393, 399, 159 P 2d 323.

Collateral References

Contracts ⇨ 143, 147.
17 C.J.S. *Contracts* §§ 294, 295.

13-716. (7541) Particular clauses subordinate to general intent. Particular clauses of a contract are subordinate to its general intent.

History: En. Sec. 2215, Civ. C. 1895; re-en. Sec. 5039, Rev. C. 1907; re-en. Sec. 7541, R. C. M. 1921. Cal. Civ. C. Sec. 1650. Field Civ. C. Sec. 815.

Mutuality as to Each Covenant Not Required

Generally it is not essential that each covenant of agreement of the lessor in an oil lease shall be supported by specific reciprocal covenant or agreement by the lessee, it being sufficient if the contract contain mutual obligations binding upon both parties, and that the lessee could surrender it "upon payment of \$-----," it was not void for want of mutuality in this respect, the other provisions of the

contracts being wholly independent of it and enforceable. *Hinerman v. Baldwin et al.*, 67 M 417, 433, 215 P 1103.

References

Cited or applied as section 5039, Revised Codes, in *Wright Land & Investment Co. v. Even et al.*, 57 M 1, 186 P 681; *McDaniel v. Hager-Stevenson Oil Co.*, 75 M 356, 243 P 582; *Custer v. Missoula Public Service Co.*, 91 M 136, 143, 6 P 2d 131; *Shelley v. Normile*, 109 M 117, 125, 94 P 2d 206; *Letz v. Lampen*, 110 M 477, 480, 104 P 2d 4; *Norwegian Lutheran Church of America v. Armstrong*, 112 M 528, 532, 118 P 2d 380; *Davis v. Park Securities Corp.*, 117 M 393, 399, 159 P 2d 323.

13-717. (7542) Contract—partly written and partly printed—written parts control. Where a contract is partly written and partly printed, or where part of it is written or printed under the special directions of the parties, and with a special view to their intention, and the remainder is copied from a form originally prepared without special reference to the particular parties and the particular contract in question, the written parts control the printed parts, and the parts which are purely original control those which are copied from a form. And if the two are absolutely repugnant, the latter must be so far disregarded.

History: En. Sec. 2216, Civ. C. 1895; re-en. Sec. 5040, Rev. C. 1907; re-en. Sec. 7542, R. C. M. 1921. Cal. Civ. C. Sec. 1651. Field Civ. C. Sec. 816.

Operation and Effect

Held in an action to enforce the cancellation of an oil and gas lease and to recover damages for refusal to cancel, that a written paragraph therein, providing that in the event a well was not commenced within the time limit mentioned in the lease, the instrument should be null and void, was controlling as against a printed one under which, if the operations were not commenced within that time the lessor should pay two dollars per acre for each additional year commencement of drilling was delayed, and that demurrer to the complaint was improperly sustained.

Daley et al. v. Torrey, 69 M 599, 223 P 498.

Where a contract is partly written and partly printed and the two are inconsistent, the former controls the latter. *New Home Sewing M. Co. v. Songer et al.*, 91 M 127, 134, 7 P 2d 238.

References

Cited or applied as section 2216, Civil Code, in *Bickford v. Kirwin*, 30 M 1, 6, 75 P 518; as section 5040, Revised Codes, in *Wright Land & Investment Co. v. Even et al.*, 57 M 1, 186 P 681; *Shelley v. Normile*, 109 M 117, 125, 94 P 2d 206.

Collateral References

Contracts ⇨ 163 and other particular topics.
17 C.J.S. *Contracts* § 310.
12 Am. Jur. 797, *Contracts*, § 253.

13-718. (7543) Repugnancies—how reconciled. Repugnancies in a contract must be reconciled, if possible, by such an interpretation as will give some effect to the repugnant clauses, subordinate to the general intent and purpose of the whole contract.

History: En. Sec. 2217, Civ. C. 1895; re-en. Sec. 5041, Rev. C. 1907; re-en. Sec. 7543, R. C. M. 1921. Cal. Civ. C. Sec. 1652. Field Civ. C. Sec. 817.

Operation and Effect

This section is a rule of interpretation rather than of construction. *Butte Water Co. v. City of Butte*, 48 M 386, 397, 138 P 195.

References

Cited or applied as section 2217, Civil Code, in *Ackley v. Phenix Ins. Co.*, 25 M 272, 281, 64 P 665; as section 5041, Revised Codes, in *Wright Land & Investment Co.*

v. Even et al., 57 M 1, 186 P 681; *Cook-Reynolds Co. v. Wilson*, 67 M 147, 154, 214 P 1104; *Shelley v. Normile*, 109 M 117, 125, 94 P 2d 206; *Letz v. Lampen*, 110 M 477, 480, 104 P 2d 4; *Norwegian Lutheran Church of America v. Armstrong*, 112 M 528, 532, 118 P 2d 380; *Davis v. Park Securities Corp.*, 117 M 393, 399, 159 P 2d 323.

Collateral References

Contracts—162 and other particular topics.

17 C.J.S. Contracts § 309.

12 Am. Jur. 778, Contracts, § 243.

13-719. (7544) Inconsistent words rejected. Words in a contract which are wholly inconsistent with its nature, or with the main intention of the parties, are to be rejected.

History: En. Sec. 2218, Civ. C. 1895; re-en. Sec. 5042, Rev. C. 1907; re-en. Sec. 7544, R. C. M. 1921. Cal. Civ. C. Sec. 1653. Field Civ. C. Sec. 818.

Operation and Effect

Under this section where a word appears in a contract which is meaningless in the connection in which it is employed,

it must be disregarded in the interpretation of the writing. *Kasun v. Todevich*, 71 M 315, 319, 229 P 714; *Shelley v. Normile*, 109 M 117, 126, 94 P 2d 206; *Norwegian Lutheran Church of America v. Armstrong*, 112 M 528, 532, 118 P 2d 380; *Davis v. Park Securities Corp.*, 117 M 393, 399, 159 P 2d 323.

13-720. (7545) Words to be taken most strongly against whom. In cases of uncertainty not removed by the preceding rules, the language of a contract should be interpreted most strongly against the party who caused the uncertainty to exist. The promisor is presumed to be such party; except in a contract between a public officer or body, as such, and a private party, in which it is presumed that all uncertainty was caused by the private party.

History: En. Sec. 2219, Civ. C. 1895; re-en. Sec. 5043, Rev. C. 1907; re-en. Sec. 7545, R. C. M. 1921. Cal. Civ. C. Sec. 1654. Field Civ. C. Sec. 819.

Ambiguities in Contract Resolvable Against Mutual Death Benefit Associations

The rule prevailing in litigation concerning insurance policies that any ambiguity in the policy shall be resolved against the insurer since the latter is responsible for the form of the contract under this section, is applicable to contracts between mutual death benefit societies and their members. *McDonald v. Northern Benefit Association*, 113 M 595, 605, 131 P 2d 479.

Insurance Policies

In interpreting policies of insurance the courts shall resolve uncertainties and am-

biguities in the policy against the insurer since it is responsible for the form of the contract. *Johnson v. Continental Cas. Co.*, 127 M 281, 263 P 2d 551.

Operation and Effect

Where the evidence tends to prove that the promisee wrote the agreement and selected the terms thereof, the presumption under this section gives way to the contrary one that the latter caused the uncertainty, and the burden rests on him to remove it. *Blankenship v. Decker*, 34 M 292, 301, 85 P 1035.

Under this rule, answers to questions in an application for life insurance as to the prior health of the applicant were representations, and not warranties. *Pelican v. Mutual Life Ins. Co.*, 44 M 277, 288, 119 P 778. See *Mutual Life Ins. Co. v. Hilton-Green*, 211 Fed 31, 34.

Where, after applying the ordinary rules of construction, any uncertainty remains in the terms and expressions employed in a contract, they must be construed most strongly against the party who drew it up—in this instance an attorney at law. *Lyon v. Dailey Copper M. & S. Co.*, 46 M 108, 121, 126 P 931.

When a school board had provided in its rules that, in case a teacher resigns or is dismissed before the end of the school year, her compensation shall be “for only the actual time in service,” the language being that of the board, any uncertainty in it must be construed most strongly against the board in a controversy with it by a teacher on a claim for compensation. *Finley v. School District No. 1*, 51 M 411, 414, 153 P 1010.

Where defendant in offering employment to plaintiff by letter and subsequently in employing him stated orally that he would give him work “the year round” at a compensation of \$75 a month, the burden of removing any uncertainty as to the meaning of the term “the year round” was upon defendant as the party who by its use caused the uncertainty to exist, and his failure to do so warranted the jury in finding that the employment was to be from the beginning to the end of the contract year. *Weir v. Ryan*, 68 M 336, 339, 218 P 947.

The language of an undertaking on appeal must be interpreted most strongly against the sureties and upon them rests the burden of explaining or removing whatever uncertainty exists therein. *Kasun v. Todevich*, 71 M 315, 318, 229 P 714.

If the provisions of contracts (promissory note and mortgage securing it) prepared by plaintiff in a foreclosure suit are uncertain they must be most strongly construed against him, under this section, he having caused the uncertainty to exist. *United States Bldg. etc. Assn. v. Gardiner*, 87 M 586, 591, 289 P 555.

If there is any ambiguity in an insurance policy, in the instant case a health and accident policy, the policy form of which was provided by the insurance company, it must, under this section, be resolved against it; the word “period” held to mean continuous during the indemnity period of loss of time, and not a period of one month, where an exclusion clause limited indemnity to any period during which insured was under the regular professional attendance of a physician. *Scinski v. Great Northern Life Insurance Co.*, 110 M 106, 111, 99 P 2d 218.

Where defendant furnished contractors

with surety bond providing that contractors would faithfully perform contract with Montana state highway commission for roadwork, and contract required contractors to carry public liability insurance to indemnify public for injuries sustained by reason of work on highway, defendant was liable for satisfaction of judgments, notwithstanding exclusion clause under which use of automobiles was excluded from coverage of policy. *Doheny v. United States Fidelity & Guaranty Co.*, 34 F Supp 888, 891, 123 F 2d 746.

Where there is an uncertainty in a contract, it is to be interpreted most strongly against the person who caused the uncertainty to exist. Thus where there was a question as to what was intended to be improvements as contemplated by the \$1200 rent provisions of the lease and both the lessor and the lessee gave testimony, it was error for the court to disregard such testimony. Consideration of the improvements made by the lessee should be given by the lower court and the value of these items offset against the rents contemplated. *Hempstead v. Allen*, 126 M 578, 255 P 2d 342, 346.

References

Cited or applied as section 2219, Civil Code, in *Bickford v. Kirwin*, 30 M 1, 7, 75 P 518; as section 5043, Revised Codes, in *Wright Land & Investment Co. v. Even et al.*, 57 M 1, 186 P 681; *Mutual Life Ins. Co. v. Hilton-Green*, 211 Fed 31, 34; *McDonald et al. v. McNinch et al.*, 63 M 308, 314, 206 P 1096; *Daley et al. v. Torrey*, 69 M 599, 602, 223 P 498; *State v. Pondera Valley State Bank et al.*, 77 M 1, 6, 248 P 207; *Hill Cattle Corporation v. Killorn et al.*, 79 M 327, 341, 256 P 497; *Sutton v. Masterson*, 86 M 530, 284 P 264; *New Home Sewing M. Co. v. Songer et al.*, 91 M 127, 135, 7 P 2d 238; *Brown v. Homestake Exploration Co.*, 98 M 305, 39 P 2d 168; *Shelley v. Normile*, 109 M 117, 126, 94 P 2d 206; *Letz v. Lampen*, 110 M 477, 480, 482, 104 P 2d 4; *Doheny v. United States Fidelity & Guaranty Co.*, 34 F Supp 888, 891; *Van De Putte v. Texas Pacific Coal & Oil Co.*, 35 F Supp 794, 797; *Davis v. Park Securities Corp.*, 117 M 393, 400, 159 P 2d 323; *Hart v. Barron*, 122 M 350, 204 P 2d 797, 807; *Bull Creek Oil & Gas Development v. Bethel*, 127 M 222, 258 P 2d 960, 963.

Collateral References

Contracts—155 and other particular topics.
17 C.J.S. Contracts § 324.

13-721. (7546) Reasonable stipulations — when implied. Stipulations which are necessary to make a contract reasonable, or conformable to usage, are implied, in respect to matters concerning which the contract manifests no contrary intention.

History: En. Sec. 2220, Civ. C. 1895; re-en. Sec. 5044, Rev. C. 1907; re-en. Sec. 7546, R. C. M. 1921. Cal. Civ. C. Sec. 1655. Field Civ. C. Sec. 820.

References

Whittaker v. United States Fidelity & Guaranty Co., 300 Fed 129; Hardenburgh

v. Hardenburgh, 115 M 469, 480, 146 P 2d 151.

Collateral References

Contracts—168 and other particular topics.

17 C.J.S. Contracts § 328.

13-722. (7547) Necessary incidents implied. All things that in law or usage are considered as incidental to a contract, or as necessary to carry it into effect, are implied therefrom, unless some of them are expressly mentioned therein, when all other things of the same class are deemed to be excluded.

History: En. Sec. 2221, Civ. C. 1895; re-en. Sec. 5045, Rev. C. 1907; re-en. Sec. 7547, R. C. M. 1921. Cal. Civ. C. Sec. 1656. Field Civ. C. Sec. 821.

Operation and Effect

A lease of agricultural lands which did not impose upon either party the work of preparing them for crops or provide who should furnish seed, bear the expense of harvesting, extra help, etc., was not void for uncertainty, it being implied under this section from the fact that the lessees were to have possession for the purpose of producing crops, that they were to do these things. McDonald et al. v. McNinch et al., 63 M 308, 313, 206 P 1096.

Where a deed to a tract of farm land expressly conveyed a water right sufficient in amount to irrigate the acreage sold, all other rights theretofore used in connection with the land were impliedly excluded, and did not pass under the general appurtenance clause in the deed. Lensing v. Day & Hansen Security Co., 67 M 382, 385, 215 P 999.

References

Montgomery v. First National Bank of Dillon, 114 M 395, 408, 136 P 2d 760; Hardenburgh v. Hardenburgh, 115 M 469, 480, 146 P 2d 151.

13-723. (7548) Time of performance of contract. If no time is specified for the performance of an act required to be performed, a reasonable time is allowed. If the act is in its nature capable of being done instantly—as, for example, if it consists in the payment of money only—it must be performed immediately upon the thing to be done being exactly ascertained.

History: En. Sec. 2222, Civ. C. 1895; re-en. Sec. 5046, Rev. C. 1907; re-en. Sec. 7548, R. C. M. 1921. Cal. Civ. C. Sec. 1657. Field Civ. C. Sec. 822.

Complaint—Allegation as to Time of Payment

Where a contract is wholly silent as to the time of performance and contains no statement from which any particular time may be inferred, a complaint based thereon is insufficient unless it alleged that the contract was to be performed within a reasonable time; however, a promise to perform (make payment) when convenient is construed as a promise to do so within a reasonable time. Evankovich v. Howard Pierce, Inc., 91 M 344, 351, 8 P 2d 653.

Id. In order to state a cause of action for the breach of a contract calling for payment within a reasonable time, the complaint must allege a time of performance so that it may appear what relation time bore to the alleged breach of duty and that the cause of action had accrued before the commencement of suit.

Where in an action against an estate to recover on a rejected claim based on the oral agreement of decedent to pay half the expense incident to repairs of residence property owned by him and plaintiff, his sister, jointly, the complaint did not allege when payment should be made, but it was pleaded therein that a verified claim had been presented to the administratrix, which allegation was admitted, the complaint held sufficient under this section to show that the amount due was ascertained and that it was due and payable when the complaint was filed. Binzel v. Viehmann, 111 M 6, 15, 106 P 2d 187.

Operation in General

Failure of a contract for the development of mining claims to provide a specified time within which defendants should begin operations and prosecute the work of development to completion is alone insufficient to void the contract, since under this section, they were allowed a reasonable time within which to do the acts required. Lee v. Lee Gold Mining Co. et al., 71 M 592, 602, 230 P 1091.

Id. Where purchasers of an interest in mining property agreed to develop the property and proceeded to do so at once and continued doing so until an action was commenced by the owner to cancel the contract upon the ground, among others, that it did not provide a specified time within which operations should be begun and prosecuted to completion, plaintiff was not in a position to complain on the latter ground.

Where one buys personal property at a stipulated price and no time of payment is agreed upon, the law fixes the time of delivery as the time of payment, and the rule declared by this section that if no time is specified for the performance of an act, a reasonable time for performance is allowed, had no application. *Burden v. Elling State Bank*, 76 M 24, 36, 245 P 958.

Where no time is specified for the performance of an act required to be done by a contract, a reasonable time therefor is allowed, under this section. *Orem v. Hansen Packing Co.*, 91 M 222, 231, 7 P 2d 546.

Where under an executed oral agreement the terms of an oil and gas lease were modified to the extent of granting an indefinite extension of time of payment of delay rentals by the lessee, the latter had a reasonable time within which to make payment. *Griffith v. Cedar Creek Oil & Gas Co.*, 91 M 553, 559, 8 P 2d 1071.

13-724. (7549) Time—when of essence. Time is never considered as of the essence of a contract, unless by its terms expressly so provided.

History: En. Sec. 2223, Civ. C. 1895; re-en. Sec. 5047, Rev. C. 1907; re-en. Sec. 7549, R. C. M. 1921. Cal. Civ. C. Sec. 1658. Field Civ. C. Sec. 823.

Duty of Court When Time is of Essence

When the provision that time is of the essence of the contract is included in the contract, it is the duty of courts to carry out the intention of the parties by giving effect to that provision; for to ignore or circumvent it when deliberately written into a contract by the parties, or by any sort of construction to nullify its effects, is to make a new contract for the parties, different from the one which they themselves constructed—something even a court of equity is not authorized to do. *Fratt v. Daniel-Jones Co.*, 47 M 487, 496, 133 P 700.

Id. Courts will not undertake to make contracts for parties different from those which the parties themselves intended, but will enforce a provision making time of the essence of a contract, unless the party for whose benefit it was inserted has waived it or is estopped to insist upon its enforcement, or performance has been prevented by intervening circumstances sufficient to relieve the party from the

Reasonable Time

Where, under contract for sale of real estate, deed was placed in escrow, to be delivered to purchaser upon making certain payments, but no time limit was provided for in the contract, the reasonable time for compliance with the contract would not extend beyond the date the purchaser was to have "possession of the premises on expiration of present lease" which was seven months thereafter. *Hart v. Barron*, 122 M 350, 204 P 2d 797, 807.

Time of Payment—Presumption

Where time of payment is not specified in contract the law implies that payment will be made within a reasonable time or upon demand. *Johnson v. Elliot*, 123 M 597, 218 P 2d 703, 707.

References

Cited or applied as section 5046, Revised Codes, in *State ex rel. Western A. & I. Co. v. District Court*, 55 M 330, 335, 176 P 613; *Polich Trading Co. v. Billings Hudson Terraplane Co.*, 114 M 446, 451, 137 P 2d 661.

Collateral References

Contracts—210, 211 and other particular topics.

17 C.J.S. Contracts §§ 358, 502.

12 Am. Jur. 854, Contracts, §§ 299-313.

performance of any other provision of the contract.

Effect of Breach of Provision Relative to Time

Where a contract of sale provides that the vendor shall have the right to declare it at an end, upon failure by the vendor to make payment on a date fixed, time being expressly made of the essence of the contract, breach by the vendee does not ipso facto terminate the agreement, but an election is necessary on the part of the vendor requiring some sort of notice on his part to make the provision effective. *Fratt v. Daniel-Jones Co.*, 47 M 487, 499, 133 P 700.

Oral Evidence not Admissible to Show Time to be of Essence

Where a contract for the sale of sheep was silent as to time being of the essence of the contract, it was error to permit oral evidence that such was nevertheless the intention of the parties. *Curtis v. Parham*, 49 M 140, 144, 140 P 511.

Validity

Neither the provision making time of the essence of a contract of sale, nor the

contract containing such a provision, is invalid as against positive law or public policy. *Fratt v. Daniel-Jones Co.*, 47 M 487, 496, 133 P 700.

What Sufficient to Meet Requirement of Statute

Under this section, held, that a provision in a life insurance policy that payment of a premium should not maintain the policy beyond the due date when the next premium is payable, was tantamount to a declaration that time should be considered as of the essence of the contract and sufficient to meet the requirement of the statute, and therefore failure to make prompt payment ipso facto voided the contract. *Johnson v. Metropolitan Life Insurance Co.*, 107 M 133, 151, 83 P 2d 922.

When Time is of the Essence

Where an oral contract was made to sell real property, and suit was brought by the vendee for specific performance, the court could not say, according to the facts of the case, that time was of the essence of the agreement. *Stevens v. Trafton*, 36 M 520, 529, 93 P 810.

Under a contract of sale, by the terms of which failure to pay an installment of the purchase price ends the contract, time being expressly declared of the essence of it, notice that an instalment has fallen due is not required, and therefore a claim that plaintiff was guilty of laches because of delay in giving it had no merit. *Fratt v. Daniel-Jones Co.*, 47 M 487, 498, 133 P 700.

Under this section, but one subject is open to discussion, and that is not what the parties may have intended to say, but

what they did say in their contract. It is true, of course, that no set form or arrangement of words is necessary, but the contract must, upon its face, convey the meaning that time shall be of the essence. *Curtis v. Parham*, 49 M 140, 144, 140 P 511.

Held, that an oil and gas lease is merely an option contract, that time is of its essence even though a stipulation to that effect is absent from the writing, and that failure of the lessee to act promptly renders his rights subject to termination at the election of the lessor. *Thomas v. Standard Development Co.*, 70 M 156, 172, 224 P 870.

Where escrow agreement in connection with sale of land required \$700 to be paid by a certain date for delivery of the deed provision in such agreement that "time is and shall be insofar as the Escrow Agent is concerned of the essence of this agreement" did not by its express terms make time the essence of the contract so far as the purchaser was concerned and did not require the \$500 original payment to be forfeited. *Herman v. Herman*, 123 M 39, 207 P 2d 1155, 1157.

References

Cited or applied as section 5047, Revised Codes, in *Tuttle v. Pacific Mutual Life Ins. Co.*, 58 M 121, 190 P 993; *Krause v. Insurance Co. of North America*, 73 M 169, 176, 235 P 406; *Burden v. Elling State Bank*, 76 M 24, 36, 245 P 958.

Collateral References

Contracts Ⓒ211.
17 C.J.S. *Contracts* § 504.
12 Am. Jur. 861, *Contracts*, §§ 306-313.

13-725. (7550) When joint and several. Where all the parties who unite in a promise receive some benefit from the consideration, whether past or present, their promise is presumed to be joint and several.

History: En. Sec. 2224, Civ. C. 1895; re-en. Sec. 5048, Rev. C. 1907; re-en. Sec. 7550, R. C. M. 1921. Cal. Civ. C. Sec. 1659. Field Civ. C. Sec. 824.

Collateral References

12 Am. Jur. 814, *Contracts*, § 268.

13-726. (7551) Same—in singular number. A promise, made in the singular number, but executed by several persons, is presumed to be joint and several.

History: En. Sec. 2225, Civ. C. 1895; re-en. Sec. 5049, Rev. C. 1907; re-en. Sec. 7551, R. C. M. 1921. Cal. Civ. C. Sec. 1660. Field Civ. C. Sec. 825.

Collateral References

Contracts Ⓒ182, 348 and other particular topics.
17 C.J.S. *Contracts* §§ 349, 578.

13-727. (7552) Executed and executory contracts defined. An executed contract is one, the object of which is fully performed. All others are executory.

History: En. Sec. 2226, Civ. C. 1895; re-en. Sec. 5050, Rev. C. 1907; re-en. Sec. 7552, R. C. M. 1921. Cal. Civ. C. Sec. 1661. Field Civ. C. Sec. 826.

Cross-Reference

Execution of contract defined, sec. 93-1101-5.

References

Griffiths v. Thrasher, 95 M 210, 221, 26 P 2d 995; Ikovich v. Silver Bow Motor Co., 117 M 268, 274, 157 P 2d 785.

Collateral References

Contracts—189 and other particular topics.

17 C.J.S. Contracts § 327.

12 Am. Jur. 506, Contracts, § 9.

CHAPTER 8

UNLAWFUL CONTRACTS

- Section 13-801. What is unlawful.
- 13-802. Certain contracts unlawful.
- 13-803. Employers protected from negligence.
- 13-804. Contracts fixing damages void.
- 13-805. Exception.
- 13-806. Restraints upon legal proceedings.
- 13-807. Contract in restraint of trade void.
- 13-808. Exception in favor of sale of good-will.
- 13-809. Exception in favor of partnership agreements.
- 13-810. Contract in restraint of marriage void.
- 13-811. Agreements concerning confession of judgment, acceptance of service, entry of default in contract to pay money are void and illegal.

13-801. (7553) What is unlawful. That is not lawful which is:

1. Contrary to an express provision of law;
2. Contrary to the policy of express law, though not expressly prohibited; or,
3. Otherwise contrary to good morals.

History: En. Sec. 2240, Civ. C. 1895; re-en. Sec. 5051, Rev. C. 1907; re-en. Sec. 7553, R. C. M. 1921. Cal. Civ. C. Sec. 1667. Field Civ. C. Sec. 827.

Contract Limiting Liability for Loss of Baggage Valid

A contract by a railway company with a passenger, limiting the liability of the carrier to one hundred dollars for loss of baggage, is valid. *Rose v. Northern Pacific Ry. Co.*, 35 M 70, 78, 88 P 767.

Contract to Increase Taxable Property is Not Illegal

Held, that a contract between a board of county commissioners and an individual under which the latter agreed to furnish the board information which would enable the placing of a large amount of property on the assessment-roll which had escaped taxation is one which affects the public welfare beneficially, not adversely, and is therefore not void as against public policy. *Simpson v. Silver Bow County*, 87 M 83, 88, 285 P 195.

Contract to Suppress the Investigation of a Criminal Offense is Illegal

A contract which tends to suppress the investigation of a criminal offense is illegal, even though it does not amount to

compounding of a felony, for the reason that it is contrary to good morals and public policy. *Portland Cattle Loan Co. v. Featherly*, 74 M 531, 547, 241 P 322.

Determination of Fees by Probate Judge Not Contrary to Public Policy

A contract between an attorney and the administratrix under which the amount of the fees to which the former should be entitled for services rendered to the latter in her representative capacity was to be determined by the judge of the probate court, was not void as against public policy on the ground that it contemplated the doing of an extrajudicial or unlawful act by the judge. *Fitzgerald v. Eisenhauer*, 62 M 582, 592, 206 P 685.

Lawful Contracts Void When Object Becomes Unlawful

A contract under which defendant was granted the right to use a patented process for dealcoholizing malt beverages which was lawful when it was first entered into, became unlawful when the prohibition law took effect (December 31, 1918), and was void thereafter in so far as it remained executory, thereby depriving plaintiff patent owner of his remedy to recover under a clause of the contract providing that in addition to a certain royalty per

barrel of beverage manufactured, defendant should pay for the use of the process not less than \$500 per year for three years from and after December 18, 1917. *Baltimore Process Co. v. Red Lodge B. Co.*, 66 M 407, 409, 213 P 798.

Note of Borrower from Bank Circumventing Requirement of "Scale-down" Agreement of Creditor, Void

Where a farmer's creditor, after signing a so-called "scale-down" agreement required under the emergency farm mortgage act, as a prerequisite to a loan to the farmer, whereby he agreed to accept partial payment of his claim in full settlement of the farmer's obligation, thereafter required the farmer's son-in-law to execute a note as accommodation maker for the difference between the settlement and the amount of the claim, held, that the note amounted to a fraud upon the bank, the debtor and his creditors and was void as against public policy, and that the creditor was not a holder in due course. *May v. Whitbeck*, 111 M 568, 572, 113 P 2d 332.

Operation and Effect

Contract relied upon was held to be contrary to this section and void. *Glass v. Basin & Bay State Min. Co.*, 31 M 21, 31, 77 P 302.

A contract made by a board of county commissioners, a few weeks before the expiration of its term of office, and upon the expiration of a prior contract, for county printing for the two succeeding years, is valid in the absence of fraud or bad faith in the making. *Picket Pub. Co. v. Board of County Commrs.*, 36 M 188, 194, 195, 92 P 524.

A failure to perform an act imposed by law as an absolute duty is an unlawful omission. *Conway v. Monidah Trust*, 47 M 269, 278, 132 P 26.

13-802. (7554) Certain contracts unlawful. All contracts which have for their object, directly or indirectly, to exempt any one from responsibility for his own fraud, or for wilful injury to the person or property of another, or violation of law, whether wilful or negligent, are against the policy of the law.

History: En. Sec. 2241, Civ. C. 1895; re-en. Sec. 5052, Rev. C. 1907; re-en. Sec. 7554, R. C. M. 1921. Cal. Civ. C. Sec. 1668. Field Civ. C. Sec. 828.

Exception—Where Illegal Contract Enforceable

Under the uniformly accepted exception to the general rule that an illegal contract is not enforceable, namely that where refusal to enforce would produce a harmful effect on parties for whose protection the law, making the transaction illegal, was enacted, in the instant case the taxpayers, enforcement is allowed,

Contracts made in violation of express statutes are contrary to public policy and absolutely and wholly void and of no legal effect. *Hames v. Polson*, 123 M 469, 215 P 2d 950.

When Equity Will Uphold Separation Agreement Made Prior to Divorce

Where the husband, prior to divorce entered into a separation agreement to pay his wife a monthly sum she thereafter sued to enforce payment thereof, and he alleged in his answer that the agreement was executed collusively in aid of the subsequent divorce and was therefore void as against public policy; the answer not stating a defense under prior holdings of the court, the court granted the wife judgment on the pleadings under the rule of equity that he couldn't accept the benefits and shirk the burdens, particularly where she relinquished her property rights. *Ryan v. Ryan*, 111 M 104, 107, 106 P 2d 337.

References

Cited or applied as section 2240, Civil Code, in *Finlen v. Heinze*, 28 M 548, 566, 73 P 123; as section 5051, Revised Codes, in *Spaulding v. Maillet*, 57 M 318, 326, 188 P 377; *Biering et al. v. Ringling*, 74 M 176, 196, 240 P 829; *Smith Engineering Co. v. Rice*, 102 F 2d 492, 500; *State v. Bourdeau*, 126 M 266, 246 P 2d 1037, 1039.

Collateral References

Contracts 105, 108(1), 112.
17 C.J.S. *Contracts* §§ 5, 201, 211, 265.
Generally, see 12 Am. Jur. 641, *Contracts*, §§ 149-225.

Recovery of money or property lost through cheating or fraud in forbidden gambling or game. 39 ALR 2d 1213.

held, that where the county commissioners allowed a bondsman to execute a note to postpone his payment under a depository bond securing county funds in an insolvent bank, in violation of Art. V, Sec. 39, Const., the county could enforce payment of the note. *Fergus County v. Osweiler*, 107 M 466, 473, 86 P 2d 410.

Operation and Effect

The defense of assumption of risk, which has for its basis the common-law principle expressed by the maxim, "Volenti non fit injuria," and does not rest in contract between the master and servant, is not

abrogated by this and the next succeeding section. *Osterholm v. Boston etc. Min. Co.*, 40 M 508, 523, 107 P 499.

A stipulation by a telegraph company, on one of its blanks, that it will not be answerable for damages or statutory penalties, if a claim is not made within a specified time, is void under this section as against public policy, if it was ever in-

tended as a cloak for fraud or crime. *Lahood v. Continental Tel. Co.*, 52 M 313, 323, 157 P 639.

Collateral References

Contracts—113, 114.

17 C.J.S. Contracts §§ 200, 262.

12 Am. Jur. 672, Contracts, §§ 173-185.

13-803. (7555) Employers protected from negligence. Any contract or agreement entered into by any person, company, or corporation with its servants or employees, whereby such person, company, or corporation shall be released or discharged from liability or responsibility on account of personal injuries received by such servants or employees while in the service of such person, company, or corporation, by reason of the negligence of such person, company, or corporation, or the agents or employees thereof, shall be absolutely null and void.

History: En. Sec. 2242, Civ. C. 1895; re-en. Sec. 5053, Rev. C. 1907; re-en. Sec. 7555, R. C. M. 1921.

Cross-Reference

Contracts releasing liability for negligence void, sec. 94-1614.

References

Cited or applied as section 5053, Revised

Codes, in *Osterholm v. Boston etc. Min. Co.*, 40 M 508, 523, 107 P 499.

Collateral References

Contracts—114; Master and Servant—100.

17 C.J.S. Contracts § 262; 56 C.J.S. Master and Servant § 197 et seq.

12 Am. Jur. 683, Contracts, § 183.

13-804. (7556) Contracts fixing damages void. Every contract by which the amount of damage to be paid, or other compensation to be made, for a breach of an obligation, is determined in anticipation thereof, is to that extent void, except as expressly provided in the next section.

History: En. Sec. 2243, Civ. C. 1895; re-en. Sec. 5054, Rev. C. 1907; re-en. Sec. 7556, R. C. M. 1921. Cal. Civ. C. Sec. 1670. Field Civ. C. Sec. 830.

Operation and Effect

A contract which bound the defendant irrigation company to furnish to plaintiff a certain amount of water during a certain season, and which provided that, if the company should for any reason fail to deliver the water, it would return to plaintiff the money paid by him, and plaintiff agreed to accept the same, and to release the company from any damage arising from such failure, fell clearly within the provisions of this section, and was void on its face to the extent of the liquidated damages agreed on in case of a breach. *Deuninck v. West Gallatin Irr. Co.*, 28 M 255, 261, 72 P 618.

Even if a provision in a contract for the sale of real estate, that the purchaser, in case of his default, shall forfeit all advance payments, is a stipulation for liquidated damages within the inhibition of this section, this fact would not of itself require that in every, or in any case, the defaulting purchaser should have re-

turn of the moneys paid by him; on the contrary, its effect is to leave the parties where they would be if no such stipulation had been made. Without such a stipulation the defaulting purchaser is not, in the absence of an equitable showing, entitled to a return of any part of the moneys paid. *Cook-Reynolds Co. v. Chipman*, 47 M 289, 297, 133 P 694.

Since the language of this section is general, every contract containing a stipulation such as is denounced therein is prima facie void, as to the stipulation; therefore, when recovery is sought upon it, the plaintiff's allegations and proof must bring it within the exception provided in the succeeding section. *Clifton v. Willson*, 47 M 305, 312, 132 P 424.

Where a contract of purchase provides that a failure to make any deferred payment shall work an immediate forfeiture of the contract, the contract, in so far as it provides for liquidated damages, may be void and of no effect under this section; still, in any event, the defaulting purchaser, in the absence of a showing on his part, such as would appeal to the conscience of a court of equity, is not entitled to a return of any part of the purchase

price made by him, though he asks for it. *Fratt v. Daniel-Jones Co.*, 47 M 487, 496, 133 P 700.

The provision in a contract of sale of certain machinery, to the effect that twenty days' use should constitute an acceptance and waiver of deficiencies, is neither void as a stipulation for liquidated damages, as provided in this section, nor obnoxious as a restriction upon the right to have one's claims adjudicated in a court of law, as provided by section 13-806. *Best Mfg. Co. v. Hutton*, 49 M 78, 93, 141 P 653.

Where Further Proof of Facts Unnecessary

Where the substance of the provisions of Montana statutes indicating facts which

13-805. (7557) Exception. The parties to a contract may agree therein upon an amount which shall be presumed to be an amount of damage sustained by a breach thereof, when, from the nature of the case, it would be impracticable or extremely difficult to fix the actual damage.

History: En. Sec. 2244, Civ. C. 1895; re-en. Sec. 5055, Rev. C. 1907; re-en. Sec. 7557, R. C. M. 1921. Cal. Civ. C. Sec. 1671. Field Civ. C. Sec. 831.

Operation and Effect

Where a suit is brought on a contract for the actual, and not the liquidated, damages, it is for the defendant to show by proper answer and competent proof that the contract for stipulated damages is valid under this section, and such question cannot be presented to the court by

13-806. (7558) Restraints upon legal proceedings. Every stipulation or condition in a contract by which any party thereto is restricted from enforcing his rights under the contract, by the usual proceedings in the ordinary tribunals, or which limits the time within which he may thus enforce his rights, is void.

History: En. Sec. 2245, Civ. C. 1895; re-en. Sec. 5056, Rev. C. 1907; re-en. Sec. 7558, R. C. M. 1921. Field Civ. C. Sec. 832.

Operation and Effect

This section is the statement in the form of a statutory enactment of the common law as it existed in this state prior to the adoption of the codes in 1895. According thereto, a provision of a contract by which the construction to be placed on it by the agent of one of the parties should be final, without the right of appeal to the courts, is void. *Wortman v. Montana Central Ry. Co.*, 22 M 266, 278, 56 P 316.

This section does not apply to contracts made before its adoption. *Cotter v. A. O. U. W.*, 23 M 82, 90, 57 P 650.

A provision in a fire insurance policy that no action shall be sustainable in any

a party seeking to recover liquidated damages under a construction contract must allege and prove were embodied by agreement in a construction contract which the United States was seeking to enforce, further allegations and proof of such facts were unnecessary. (Citing this and the following section.) *United States v. Grogan*, 39 F Supp 819, 820.

References

Cited or applied as section 2243, Civil Code, in *Bennett Bros. Co. v. Fitchett*, 24 M 457, 468, 62 P 780.

Collateral References

Damages↔76-82.

25 C.J.S. Damages §§ 104-111, 113.

demurrer to the complaint. *Deuninek v. West Gallatin Irr. Co.*, 28 M 255, 261, 72 P 618.

References

Cited or applied as section 5055, Revised Codes, in *Clifton v. Willson*, 47 M 305, 310, 132 P 424.

Collateral References

Damages↔79.

25 C.J.S. Damages § 107.

court of law or equity "unless commenced within twelve months after the fire" held void as against public policy under this section declaring that every stipulation or condition in a contract which limits the time within which a party may enforce his rights, is void. *Thielbar Realities, Inc. v. Insurance Co.*, 91 M 525, 533, 9 P 2d 469.

A provision in timber sale regulations, made a part of contract for sale of timber on Indian reservation, that depreciation in value and quantity caused by purchaser's breach should be estimated under direction of officer approving the contract, was valid under this Montana section. *Polley's Lumber Co. v. United States*, 115 F 2d 751.

A provision in the by-laws of a fraternal benefit society requiring a member claiming to be entitled to benefits, as a condi-

tion precedent to his maintaining an action in the courts, to follow an elaborate procedure before various committees of the branch and supreme bodies of the society in an effort to exhaust all his remedies therein prescribed, held, invalid. *Cacic v. Slovenska Narodna Podporna Jednota*, 102 M 438, 441, 59 P 2d 910.

The constitution of an Ohio fraternal benefit society which limited the time for bringing actions against the society would not govern the statute of limitations in

view of this section. *Trammel v. Brotherhood of Locomotive Firemen*, 126 M 400, 253 P 2d 329, 334.

References

Cited or applied as section 5056, Revised Codes, in *Best Mfg. Co. v. Hutton*, 49 M 78, 93, 141 P 653.

Collateral References

Contracts◊127.
17 C.J.S. Contracts § 229.

13-807. (7559) Contract in restraint of trade void. Any contract by which anyone is restrained from exercising a lawful profession, trade, or business of any kind, otherwise than is provided for by the next two sections, is to that extent void.

History: En. Sec. 2246, Civ. C. 1895; re-en. Sec. 5057, Rev. C. 1907; re-en. Sec. 7559, R. C. M. 1921. Cal. Civ. C. Sec. 1673. Field Civ. C. Sec. 833.

Operation and Effect

A clause in the contract of insurance entered into between a member of a fraternal society and the association, that the certificate of insurance should be void if the insured engaged in the sale of intoxicating liquor in any capacity, is not in violation of the provisions of this section. *Schwaneckamp v. Modern W. O. A.*, 44 M 526, 532, 120 P 806.

Id. This section is not a novel statute; it is but declaratory of the common law.

Id. A statute of this character refers only to a contract which, by its terms, restrains a party to it from exercising a lawful business, and the breach of which subjects the delinquent to liability.

Plaintiffs in an action seeking the forfeiture of an oil and gas lease, on the

ground, among others, that the lessee failed to fulfill the provision of the lease making it its duty to market the gas found, could properly urge that a contract entered into by the lessee with a natural gas company under which the former bound itself not to sell gas to others within a certain market, was invalid as creating a monopoly contrary to the provisions of section 20, Article XV, Constitution, and this section and section 94-1104. *Stranahan v. Independent Nat. Gas Co.*, 98 M 597, 609, 41 P 2d 39.

References

Cited or applied as section 5057, Revised Codes, in *Wylie v. Wylie P. C. Co.*, 57 M 115, 118, 187 P 279.

Collateral References

Contracts◊116, 117.
17 C.J.S. Contracts § 238.
36 Am. Jur. 496, Monopolies, Combinations, and Restraints of Trade, §§ 16 et seq.

13-808. (7560) Exception in favor of sale of good-will. One who sells the good-will of a business may agree with the buyer to refrain from carrying on a similar business within a specified county, city, or part thereof, so long as the buyer, or any person deriving title to the good-will from him, carries on a like business therein.

History: En. Sec. 2247, Civ. C. 1895; re-en. Sec. 5058, Rev. C. 1907; re-en. Sec. 7560, R. C. M. 1921. Cal. Civ. C. Sec. 1674. Field Civ. C. Sec. 834.

Good-Will in General

It would seem that a stockholder has no interest in the good-will of his corporation which he can sell. *Wylie et al. v. Wylie P. C. Co.*, 57 M 115, 187 P 279.

Id. Good-will is an incident to and inherent in the business to which it attaches.

Id. The good-will of a corporation is an intangible asset dependent on the corporate existence; it constitutes an element of value in connection with, but not apart from the corporation and its business.

Collateral References

Good Will◊5.
38 C.J.S. Good Will § 7.

13-809. (7561) Exception in favor of partnership agreements. Partners may, upon or in anticipation of a dissolution of the partnership, agree that none of them will carry on a similar business within the same city or town

where the partnership business has been transacted, or within a specified part thereof.

History: En. Sec. 2248, Civ. C. 1895; 7561, R. C. M. 1921. Cal. Civ. C. Sec. 1675. re-en. Sec. 5059, Rev. C. 1907; re-en. Sec. Field Civ. C. Sec. 835.

13-810. (7562) Contract in restraint of marriage void. Every contract in restraint of the marriage of any person, other than a minor, is void.

History: En. Sec. 2249, Civ. C. 1895; re-en. Sec. 5060, Rev. C. 1907; re-en. Sec. 7562, R. C. M. 1921. Cal. Civ. C. Sec. 1676. Field Civ. C. Sec. 836.

Collateral References

Contracts—111.
17 C.J.S. Contracts § 233.

Conditions, conditional limitations, or contracts in restraint of marriage. 122 ALR 7.

Operation and Effect

A contract in restraint of marriage of any person other than a minor is void under this section. Security State Bank v. McIntyre, 71 M 186, 202, 228 P 618.

13-811. (7562.1) Agreements concerning confession of judgment, acceptance of service, entry of default in contract to pay money are void and illegal. No contract in writing by which any promise to pay money is created, shall contain any provision either (a) empowering any person to enter judgment by confession against any party to the contract, or (b) empowering any person as the agent of any party to the contract to either confess judgment, accept service of process or consent on behalf of such party to the entry of his default in any proceeding in court upon such contract. The term "contract" as herein used shall include all writings executed contemporaneously with and constituting a part of the same transaction, and whether such writings be negotiable or non-negotiable in form. Every such provision in any such contract shall be illegal and void and shall be unenforceable in the courts of this state against any party to such contract.

History: En. Sec. 1, Ch. 197, L. 1935.

Collateral References

Judgment—29, 30, 45.
49 C.J.S. Judgments §§ 146, 147, 153.

CHAPTER 9

EXTINCTION OF CONTRACTS—RESCISSION—ALTERATION—CANCELLATION

- Section 13-901. Contracts—how extinguished.
13-902. Rescission extinguishes contract.
13-903. When party may rescind.
13-904. When stipulations against right to rescind do not defeat it.
13-905. Rescission—how effected.
13-906. Alteration of verbal contract.
13-907. Written contracts—how modified.
13-908. Extinction by cancellation, etc.
13-909. Extinction by intentional destruction, cancellation or alteration.
13-910. Alteration of duplicate, not to prejudice.

13-901. (7563) Contracts—how extinguished. A contract may be extinguished in like manner with any other obligation, and also in the manner prescribed by this chapter.

History: En. Sec. 2260, Civ. C. 1895; re-en. Sec. 5061, Rev. C. 1907; re-en. Sec. 7563, R. C. M. 1921. Cal. Civ. C. Sec. 1682.

Cross-References

Damages for breach of contract, sec. 17-301.

Revision and rescission, secs. 17-901 to 17-907.

Operation and Effect

This section provides that a contract may be extinguished in like manner with any other obligation and also in the manner prescribed by this chapter. Thus, by mutual consent the parties to a contract may terminate the contract and all obligations thereunder. *Edwards et al. v. Muri*, 73 M 339, 346, 237 P 209.

13-902. (7564) Rescission extinguishes contract. A contract is extinguished by its rescission.

History: En. Sec. 2270, Civ. C. 1895; re-en. Sec. 5062, Rev. C. 1907; re-en. Sec. 7564, R. C. M. 1921. Cal. Civ. C. Sec. 1688. See also Secs. 3406-3408. Field Civ. C. Sec. 838.

References

Cited or applied as section 5062, Revised Codes, in *Turk v. Rudman*, 42 M 1, 16, 111 P 739; *Doornbos v. Thomas*, 50 M

References

Kester v. Nelson, 92 M 69, 73, 10 P 2d 379.

Collateral References

Contracts⇒215, 249, 318 and other particular topics.

17 C.J.S. Contracts §§ 385, 387, 410.

12 Am. Jur. 981, Contracts, §§ 402 et seq.

370, 379, 147 P 277; *Advance-Rumely Threshing Co. v. Terpening*, 58 M 507, 512, 193 P 752; *Hollingsworth v. Ruckman*, 72 M 147, 156, 232 P 180.

Collateral References

Contracts⇒249, 274.

17 C.J.S. Contracts §§ 387, 440.

12 Am. Jur. 1010, Contracts §§ 430 et seq.

13-903. (7565) When party may rescind. A party to a contract may rescind the same in the following cases only:

1. If the consent of the party rescinding, or of any party jointly contracting with him was given by mistake, or obtained through duress, menace, fraud, or undue influence, exercised by or with the connivance of the party as to whom he rescinds, or of any other party to the contract jointly interested with such party;

2. If, through the fault of the party as to whom he rescinds, the consideration for his obligation fails, in whole or in part;

3. If such consideration becomes entirely void from any cause;

4. If such consideration, before it is rendered to him, fails in a material respect, from any cause; or,

5. By consent of all the other parties.

History: En. Sec. 2271, Civ. C. 1895; re-en. Sec. 5063, Rev. C. 1907; re-en. Sec. 7565, R. C. M. 1921. Cal. Civ. C. Sec. 1689. Field Civ. C. Sec. 839.

Cross-References

Insane persons, disaffirmance, secs. 64-108 to 64-112.

Minors, disaffirmance, secs. 64-106 to 64-109.

Defective Title is Grounds for Rescission

The purchaser under an executory land contract is not entitled to rescind on the ground of failure of title in the vendor so long as the latter is not in default. *Wilson v. Corcoran et al.*, 73 M 529, 532, 237 P 521.

Id. One may in good faith lawfully contract to sell land to which he has not perfect or any title, and the fact that his title is imperfect does not authorize the

purchaser to rescind the contract; but if at the time he is required to make conveyance the vendor is ready, able and willing to convey the title he contracted to convey, he is not in default.

Distinction Between Cancellation and Rescission

See *Suburban Homes Co. v. North*, 50 M 108, 114, 145 P 2; also *Oscarson et al. v. Grain Growers Assn., Inc.*, 84 M 521, 531, 277 P 14.

Election of Remedies

Where a contract for the purchase of land was procured through false representations whereby the vendee has been deceived and defrauded, he has an election of remedies: he may stand upon the contract and sue for damages, or rescind the contract, but cannot pursue both. *Smith v. Christe et al.*, 60 M 604, 201 P 1011.

Neither the remedy afforded by this section, giving a party to a contract the right to rescind on the ground of fraud, among others, nor that granted by section 17-901, under which he may have the contract reformed on the same ground, is exclusive, each being independent of the other; hence the defrauded party may elect to pursue either remedy. *Campana v. Dobry*, 69 M 240, 244, 245, 221 P 540.

Failure of Consideration

Subdivision 4 of this section, authorizing rescission if consideration for the contract fails in a material respect from any cause, applies only to executory, not executed, contracts, i. e., where there has been a change in the situation causing the consideration to fail between the time of its making and its execution. *Simeon v. Klenze*, 66 M 341, 343, 213 P 440.

Id. The buyer of a promissory note secured by mortgages on real and personal property, subject to prior liens which were foreclosed by their holders, rendering the security valueless but through no fault of the seller of the note, had no cause of action for rescission (no fraud or deceit having been practiced upon him) under any of the provisions of this section.

A buyer cannot rescind a sale of personal property on the ground of failure of consideration until he has been disturbed in his possession or otherwise suffered damages. *Courtney v. Gordon*, 74 M 408, 416, 241 P 233.

Partial failure of the consideration of a contract, though ground for rescission, does not support a plea of entire failure thereof; therefore evidence, in an action by a chattel mortgagor to enjoin the sale of sheep under a mortgage given to secure the rental of a tract of grazing land comprising 800 acres, that defendant lessors were unable to deliver possession of 320 acres thereof, held by another under a prior lease, was insufficient to support an allegation of entire failure of consideration for the contract of lease. *Nelson v. Davenport et al.*, 86 M 1, 9, 281 P 537.

Where the buyer and the seller, an administrator, were of the opinion that the realty in question belonged to the latter's decedent, the court mistakenly ordering and approving the sale, and the buyer had made part payment and executed a note for the balance due, there was such a mutual mistake and a failure of consideration as justified a rescission of the contract under this section. *Rinio v. Kester*, 99 M 1, 7, 41 P 2d 405.

Fraud

If false representations were held out to plaintiff as an inducement for the execution of notes in payment of a subscription

for corporate stock upon which it acted, the obligation becomes a nullity, and the subscriber may rescind. *Equity Co-operative Assn. v. Milling Co.*, 63 M 26, 36, 206 P 349.

Where defendant in an action to recover the purchase price of personal property in his answer pleaded that the representation of plaintiff that he had title to the property was false, but did not allege that plaintiff knew it to be false, that it was made in a manner not warranted by the information possessed by the seller, that it was made with intent to deceive, that the buyer believed it to be true or relied upon it, that he was deceived by it and misled to his prejudice, the pleading was insufficient to warrant rescission of the contract on the ground of fraud. *Courtney v. Gordon*, 74 M 408, 416, 241 P 233.

Misrepresentations

A misrepresentation made by the owner of a ranch to its purchaser that a barn, and a spring in close proximity thereto, inclosed with a fence were a part of the property sold, was material, and sufficient ground for rescission. *Fontaine v. Lyng et al.*, 61 M 590, 202 P 1112.

Mutual Consent

The parties to an executory contract of sale of real property may terminate it by mutual consent independently of any provision in the contract permitting them to do so; hence an allegation in defendant's answer to a complaint for the specific performance of the contract that plaintiff had informed him that if the abstract furnished was not satisfactory the deal would be called off, and that he accepted the offer to terminate the contract, was sufficient to show a mutual rescission of the contract, a good defense, and was proof against a general demurrer and motion to strike. *Ogg v. Herman et al.*, 71 M 10, 20, 227 P 476.

Party Seeking Rescission Must Be Free from Fault

This section authorizing rescission of a contract for failure of consideration contemplates that the party seeking rescission must himself be free from fault; where it appeared that the buyer of automobiles, under his contract was given the option to fix the time of delivery at "buyer's option when possible," but did not exercise the option until it was impossible for the seller to make delivery of the model specified, held, that he could not make his own neglect the basis for rescission, and judgment in his favor was reversed. *Polich Trading Co. v. Billings Hudson Terraplane Co.*, 114 M 446, 450, 137 P 2d 661.

Rescission in General

Under this section and section 13-905, a complainant undertaking to rescind a contract of purchase of stock, under which he paid certain money, and demanding a return of the money, is not entitled to rescission, where the existence of none of the grounds of rescission is shown, and complainant has not complied with the prescribed rules governing rescission. *Cotter v. Butte & R. V. Smelting Co.*, 31 M 129, 134, 77 P 509.

A rescission is available where a contract has been made and the consent of the party seeking it actually had, but given by mistake or obtained through duress, menace, fraud, or undue influence. *Michalsky v. Centennial Brewing Co.*, 48 M 1, 9, 134 P 307.

Rescission of Partnership Agreement Barred by Laches

Rescission of a partnership agreement lies under this section where consideration fails, but where there was no such failure upon creation of the relationship, but mere breaches in manner of operation after the relationship was established, it may not be resorted to; where defendant refused for several years to deliver to the partnership two pairs of foxes as part of the consideration to be furnished by him, plaintiff's complaint impliedly shows on its face, laches, and plaintiff's choice to affirm the agreement instead of promptly rescinding it, hence subject to general de-

murrer. *Lommasson v. Hall*, 111 M 142, 149, 106 P 2d 1089.

Written Contract Rescinded by Oral Consent

Under this section, rescission of a contract may be had by mutual consent, and a written contract may be rescinded by mutual consent not expressed in writing. *Barnard-Curtiss Co. v. Maehl*, 117 F 2d 7, 11.

References

Cited or applied as section 5063, Revised Codes, in *Turk v. Rudman*, 42 M 1, 16, 111 P 739; *Post v. Liberty*, 45 M 1, 14, 121 P 475; *Brundy v. Canby*, 50 M 454, 472, 148 P 315; *Kock v. Rhodes et al.*, 57 M 447, 188 P 933; *Bump et al. v. Geddes*, 70 M 425, 431, 226 P 512; *Dyk et al. v. Buell Land Co. et al.*, 70 M 557, 567, 227 P 71; *Edwards et al. v. Muri*, 73 M 339, 346, 237 P 209; *Fleming v. Consolidated M. S. Co.*, 74 M 245, 261, 240 P 376; *Advance-Rumely T. Co., Inc. v. Wenholz*, 80 M 82, 93, 258 P 1085; *Downs v. Nihill*, 87 M 145, 151, 286 P 410; *Kester v. Nelson*, 92 M 69, 73, 10 P 2d 379; *Federal Deposit Insurance Corporation v. Peterson*, 104 M 447, 453, 67 P 2d 305.

Collateral References

Contracts—258-261 and other particular topics.

17 C.J.S. Contracts §§ 417, 418, 420, 422.

13-904. (7566) When stipulations against right to rescind do not defeat it. A stipulation that errors of description shall not avoid a contract, or shall be the subject of compensation, or both, does not take away the right of rescission for fraud, nor for mistake, where such mistake is in a matter essential to the inducement of the contract, and is not capable of exact and entire compensation.

History: En. Sec. 2272, Civ. C. 1895; re-en. Sec. 5064, Rev. C. 1907; re-en. Sec. 7566, R. C. M. 1921. Cal. Civ. C. Sec. 1690. Field Civ. C. Sec. 840.

Collateral References

Contracts—249 and other particular topics.

17 C.J.S. Contracts § 413.

13-905. (7567) Rescission—how effected. Rescission, when not effected by consent, can be accomplished only by the use on the part of the party rescinding, of reasonable diligence to comply with the following rules:

1. He must rescind promptly, upon discovering the facts which entitle him to rescind, if he is free from duress, menace, undue influence, or disability, and is aware of his right to rescind; and,

2. He must restore to the other party everything of value which he has received from him under the contract, or must offer to restore the same, upon condition that such party shall do likewise, unless the latter is unable or positively refuses to do so.

History: En. Sec. 2273, Civ. C. 1895; re-en. Sec. 5065, Rev. C. 1907; re-en. Sec. 7567, R. C. M. 1921. Cal. Civ. C. Sec. 1691. Field Civ. C. Sec. 841.

Divisible Contract Susceptible of Partial Rescission

Under the facts presented, held, that a contract for installation of furnace, pipes, air ducts, etc., was a divisible one and susceptible of partial rescission, and that the court erred in ruling that the contract was indivisible, and that in failing to restore every part, the purchaser failed in his attempted rescission and was therefore liable for the balance due on the plant. *O'Keefe v. Routledge*, 110 M 138, 148, 103 P 2d 307.

Duty of Party Rescinding to Act Promptly and to Restore

The right to set aside a deed to mining property on the ground of fraud may be barred by laches in prosecuting a suit therefor, notwithstanding the plaintiffs reside in a foreign country and are ignorant of our language and institutions. *Streicher v. Murray*, 36 M 45, 59, 92 P 36.

Where the plaintiff seeks to rescind a contract on the ground of fraud, the defendant is entitled to know when he discovered the facts constituting the fraud; a just ground for rescission may be lost by laches. *Ott v. Pace*, 43 M 82, 89, 115 P 37.

To authorize the rescission of a contract of purchase, the buyer must, upon the discovery of facts authorizing a rescission, act promptly; the question of promptness is one for the jury. *Hillman v. Luzon Cafe Co.*, 49 M 180, 188, 142 P 641.

Mistakes of law and mistakes of fact are, as possible bases for rescission, in pari materia; there is not, either as to the duty of discovery or the time of commencing suit, any distinction between them. *Brundy v. Canby*, 50 M 454, 474, 148 P 315.

Id. As to either a mistake of law or a mistake of fact, laches may arise from a culpable neglect to discover, but a court is not required to impute laches from a delay in discovery for a period of less than nine months, merely because the mistake is one of law.

Id. Whether a case is or is not one of laches depends upon the circumstances affecting the party who seeks relief as well as the party against whom relief is sought; where the circumstances are such as to excuse a failure to discover, where also the situation of the parties has not changed, no occasion is offered to apply the doctrine of laches.

Id. The prompt action required by this section is after discovery.

One who bought what at the time he deemed a right to make immediate homestead entry of public land, but which subsequently proved to be no more than a possessory right on unsurveyed land, and with such knowledge entered the land as

a homestead when declared open to settlement, made two partial payments under his agreement, and then, after expiration of two years, brought an action to rescind and recover back his payments, was not entitled to prevail. *Hills v. Johnson*, 52 M 65, 67, 156 P 122.

A person injured by the fraudulent acts of another may elect to rescind or may affirm the transaction and sue for damages. In order to state a cause of action for rescission, it is necessary for the complaining party to allege that he has restored to the other party everything of value which was received under the contract, or that he has offered to make restitution upon condition that the offending party do likewise, unless it is made to appear that the latter is unable or positively refuses to do so. *Como Orchard Land Co. v. Markham*, 54 M 438, 442, 171 P 274.

Under this section, one desiring to rescind a contract must act promptly upon discovery of the facts which entitle him to rescind and he is aware of his right to rescind, and restore or offer to restore, to the other party everything of value which he has received from him under the contract. *Smith v. Christe et al.*, 60 M 604, 607, 201 P 1011. See also *Rowe v. Emerson-Brantingham Co.*, 61 M 73, 81, 201 P 316; *Edwards et al. v. Muri*, 73 M 339, 347, 237 P 209; *St. Onge et al. v. Blakely et al.*, 76 M 1, 13, 245 P 532; *Williams et al. v. Hefner*, 89 M 361, 374, 297 P 492; *Beebe et al. v. James*, 91 M 403, 415, 8 P 2d 803; *Silfvast v. Asplund et al.*, 93 M 584, 599, 20 P 2d 631.

Where a vendee deems himself entitled to rescission of a land contract on the ground of fraud, he must, under this section, act promptly upon discovery of the facts constituting fraud; if he had information of the facts, no matter from what source received, which, if pursued, would have resulted in knowledge, it will be held the equivalent of knowledge, and failure to get thereon constitutes laches fatal to the action. *Lasby et al. v. Burgess*, 88 M 49, 289 P 1028.

Rescission of a partnership agreement lies where consideration fails, but where there was no such failure upon creation of the relationship, but mere breaches in manner of operation after the relationship was established, it may not be resorted to; where defendant refused for several years to deliver to the partnership two pairs of foxes as part of the consideration to be furnished by him, for propagating silver foxes, plaintiff's complaint impliedly shows on its face, laches, and plaintiff chose to affirm the agreement instead of promptly rescinding it, hence subject to general demurrer. *Lommasson v. Hall*, 111 M 142, 151, 106 P 2d 1089.

Pleading

Where one party to a contract is seeking its rescission, he must act promptly upon discovering the facts that entitle him to rescind; hence, if he seeks to rescind on the ground of fraud, he must act with reasonable promptness after discovering the fraud, and his complaint should show when the discovery was made; otherwise, it is vulnerable to a special demurrer on the ground of being ambiguous, unintelligible, and uncertain. *Ott v. Pace*, 43 M 82, 89, 115 P 37.

Where, in a suit to rescind a contract for the sale of real estate, the merits of the controversy were tried, plaintiffs introducing evidence that they had restored to defendants everything received from the latter under the contract, though the complaint failed to allege that plaintiffs had placed defendants in statu quo, as required by this section, the pleading will, on appeal, be treated as amended in this respect. *Post v. Liberty*, 45 M 1, 17, 121 P 475.

The rules prescribed by this section, touching rescission, are inapplicable to an action to enforce an immediate forfeiture of a contract of purchase for the vendee's failure to make any deferred payment, where the contract provides that such failure shall work an immediate forfeiture; hence, it is not necessary for the complaint, in such last-named action, to set out facts sufficient to constitute a cause of action for the rescission of a contract. *Fratt v. Daniel-Jones Co.*, 47 M 487, 495, 133 P 700.

Restoration Such as is Reasonably Possible

The object of this section and section 17-907, requiring one rescinding a contract to make compensation or restoration is to place the other party in statu quo, i. e. to place him in the same position he was in at the time of the execution of the contract, but absolute and literal restoration is not required, it being sufficient if the restoration be such as is reasonably possible or as may be demanded by the equities of the case. *O'Keefe v. Routledge*, 110 M 138, 146, 103 P 2d 307.

Waiver of Right to Rescind

By continuing in possession of ranch property for more than five months after commencement of suit to rescind, the vendee waived his right of rescission under this section, making it incumbent upon a party desiring to rescind to tender back possession and to keep the tender good by removal from the premises. *Fontaine v. Lyng et al.*, 61 M 590, 596, 202 P 1112. See also *Beebe et al. v. James*, 91 M 403, 415, 8 P 2d 803.

While a party seeking to avoid a contract on the ground of the fraud must rescind promptly on discovery of the fraud or he will be deemed to have ratified it and waived his right to rescind, where the purchasers of farm machinery soon after discovery of defects notified the seller and were repeatedly assured that they would be remedied but without result, the delay in rescinding, caused by such promises, was justified and did not amount to a waiver of their right to rescind. *Advance-Rumely T. Co., Inc. v. Wenholz*, 80 M 82, 95, 258 P 1085.

Right to rescind a land contract on the ground of breach by the vendor for failure to deposit in escrow state land certificates at a certain time, was waived by the purchaser by remaining in possession some six years after breach and doing no more than insisting from time to time that the vendor make the deposit. *Friedrichsen v. Cobb*, 84 M 238, 246, 275 P 267.

When Restoration is Unnecessary

The requirement of this section that before a party can rescind a contract he must restore, or offer to restore, to the other party everything of value received under it, held to have been sufficiently met by an allegation in a taxpayer's complaint that articles purchased under a fraudulent contract by defendant school trustees were in the school building and could be restored to the seller by the court's decree, the rule being that where restoration has been rendered impossible through no fault of plaintiff he may have relief, particularly if the court by its decree is able to bring about restoration. *School Dist. No. 2 v. Richards et al.*, 62 M 141, 147, 205 P 206.

Under this section, one seeking rescission of a contract must restore or offer to restore to defendant everything of value received under it on condition that the latter shall do likewise, where plaintiff's tender was refused and defendant threatened to declare a forfeiture unless the balance due was paid, it appearing further that defendant was without right to sell the property involved, it may not be said that plaintiff by remaining in possession, waived his right to rescission. *Rinio v. Kester*, 99 M 1, 8, 41 P 2d 405.

References

Cited or applied as section 2273, Civil Code, in *Cotter v. Butte & R. V. Smelting Co.*, 31 M 129, 134, 77 P 509; as section 5065, Revised Codes, in *Turk v. Rudman*, 42 M 1, 16, 111 P 739; *Dyk et al. v. Buell Land Co. et al.*, 70 M 557, 567, 227 P 71; *Stanton v. Occidental Life Ins. Co. et al.*, 81 M 44, 66, 261 P 620; *Kester v. Nelson*, 92 M 69, 73, 10 P 2d 379; *Thompson v.*

Lincoln National Life Insurance Co., 110 M 521, 526, 105 P 2d 683.

Collateral References

Contracts—266.
17 C.J.S. Contracts § 439.

13-906. (7568) Alteration of verbal contract. A contract not in writing may be altered in any respect by consent of the parties in writing, without a new consideration, and is extinguished thereby to the extent of the new alteration.

History: En. Sec. 2280, Civ. C. 1895; re-en. Sec. 5066, Rev. C. 1907; re-en. Sec. 7568, R. C. M. 1921. Cal. Civ. C. Sec. 1697. Based on Field Civ. C. Sec. 842.

Collateral References

Contracts—236-246 and other particular topics.
17 C.J.S. Contracts §§ 373 et seq., 394.

References

Kester v. Nelson, 92 M 69, 73, 10 P 2d 379.

13-907. (7569) Written contracts—how modified. A contract in writing may be altered by a contract in writing, or by an executed oral agreement, and not otherwise.

History: En. Sec. 2281, Civ. C. 1895; re-en. Sec. 5067, Rev. C. 1907; re-en. Sec. 7569, R. C. M. 1921. Cal. Civ. C. Sec. 1698.

Application of Section

This section applies to all written contracts and not only to those which are required to be in writing by the statute of frauds. Fiers v. Jacobson, 123 M 242, 211 P 2d 968, 970.

Complete, Not Partial Execution of Oral Agreement Necessary

To bring about a modification or alteration of a written contract by an executed oral agreement, under this section, or to make parol evidence of such modification admissible there must have been a complete, not partial, execution of the obligations of both parties. Continental Oil Co. v. Bell et al., 94 M 123, 129, 21 P 2d 65.

An oral agreement altering a written agreement is not an "executed oral agreement," within statute authorizing modification of a written contract by an executed oral agreement unless its terms have been fully performed, and performance on one side is not sufficient. Ikovich v. Silver Bow Motor Co., 117 M 268, 274, 157 P 2d 785.

An "executed contract" is one where nothing remains to be done by either party, while an "executory contract" is one in which a party binds himself to do or not to do a particular thing in the future. Bauer v. Monroe, 117 M 306, 317, 158 P 2d 485.

Id. A contract to sell land is an "executory contract" until the conveyance is made.

Executed Oral Agreement Must be Plead

Where plaintiff in an action on a writ-

ten contract relies upon an alternation thereof by a subsequent executed oral agreement, he must plead it; in the absence of such a pleading, testimony of the alteration is inadmissible. Hunt et al. v. S Y Cattle Co., 75 M 594, 603, 244 P 480.

Extension of Due Date by Executed Oral Agreement—Authority of Agent to Agree to Extension Need Not be in Writing

Where the due dates of chattel mortgage notes were extended two years by oral agreement between the maker and the agent of the payee, which agreement was at once fully executed by payment of a consideration for the extension, it was not necessary that the authority of the agent to act should have been in writing; the oral agreement having been fully executed, it was valid though not in writing (this section) and therefore the authority of the agent was likewise not to be required to be in writing. Griffiths v. Thrasher, 95 M 210, 221, 26 P 2d 995.

Extension of Time for Payment

Where escrow agreement in connection with sale of land required \$700 to be paid by a certain date oral evidence could not be received to show that there had been an extension of time. Herman v. Herman, 123 M 39, 207 P 2d 1155, 1157.

Operation in General

A subsequent oral agreement between the parties to a written sublease of a mining claim, that in case the sublessors should buy the property the lease would be extended, was void, being a mere executory agreement without consideration. Armington v. Stelle, 27 M 13, 21, 69 P 115.

A note and chattel mortgage given to secure it are not affected by an unexecuted oral agreement in respect to the time and

manner of payment. *Kinsmen v. Stanhope*, 50 M 41, 48, 144 P 1083.

Admission of parol evidence to vary and contradict the terms of a written contract is error. *Pritchett v. Jenkins*, 52 M 81, 82, 155 P 974.

An unexecuted oral agreement, the effect of which was to alter the terms of a promissory note by extending the time of payment and changing the amount due, constituted no defense under this section to the enforcement of the note, and evidence tending to prove the agreement was improperly admitted. *Lish v. Martin*, 55 M 582, 585, 179 P 826.

Parol testimony of an oral unexecuted agreement by the tenant holding under a written lease that he would surrender the lease and vacate the premises as soon as the landlord could procure a new tenant was inadmissible under this section. *Quong et al. v. McEvoy et al.*, 70 M 99, 103, 224 P 266.

The parties to an agreement may abrogate it by a subsequent one, and therefore may in a deed agree that it shall run to the purchaser "and wife" though in a bond for the deed it was provided that it should run to the purchaser alone. *Humble v. St. John et al.*, 72 M 519, 526, 234 P 475.

"A contract in writing may be altered by a contract in writing or by an executed oral agreement, and not otherwise" (this section), and since the contract pleaded rested in parol and appears to have been unexecuted, it is impotent and constituted no defense. *Swan v. Le Clair*, 77 M 422, 251 P 155; *Olsen v. Zappone*, 83 M 573, 579, 273 P 635.

Where the lessor of oil and gas lands, before default by the lessee orally agreed to an extension of the time within which the latter was required to make payment under the contract, and the lessee remained in possession of and exercised dominion over the property thereafter with the consent of the lessor, the written contract became modified by an executed oral agreement. *Griffith v. Cedar Creek Oil & Gas Co.*, 91 M 553, 559, 8 P 2d 1071.

The statutory rule that a contract in writing may be altered by a contract in writing or by an executed oral agreement and not otherwise is not a rule of evidence but a rule of substantive law. *Bauer v. Monroe*, 117 M 306, 313, 158 P 2d 485.

Id. Where a formal written contract for deed had been entered into, an alleged oral agreement of the vendor to give the purchaser a deed if he would, among other things, give the vendor a home, was an "executory contract" and was ineffectual to alter the written contract.

Oral Testimony Inadmissible

Where for purpose of obtaining loan under G. I. Bill of Rights contractor wrote

a letter to plaintiff stating that construction of house would not exceed a stated amount, which letter was delivered to building and loan association for purpose of obtaining loan, this constituted a contract and oral testimony of contractor as to agreement as to cost was inadmissible. *Higby v. Hooper*, 124 M 331, 221 P 2d 1043, 1052.

Parol Evidence of an Executed Oral Agreement

Since under this section, a written agreement may be modified by an executed oral one, where parties had executed a portion of their engagement and then committed the remainder to writing, parol evidence of the part which had been executed was admissible. *Webber v. Killorn et al.*, 66 M 130, 133, 212 P 852.

Presumption on Appeal

A contract which must have been in writing in order to be effective will be presumed on appeal to have been in writing, nothing to the contrary appearing in the record. *Hurley v. Great Falls Baseball Assn.*, 59 M 21, 28, 195 P 559.

Rescission by Mutual Consent Not Such "Alteration" as Contemplated by This Section

Where evidence did not indicate an "alteration" of written contract for clearing of land after partial performance, except by rescission, the contention that evidence that parties mutually agreed to rescind written contract was inadmissible on ground that under this section contract in writing may be altered by a contract in writing or by an executed oral agreement and not otherwise, while a novel argument, cannot prevail, since in Montana, under section 13-903, rescission of a contract may be had by mutual consent. *Barnard-Curtiss Co. v. Maehl*, 117 F 2d 7, 10.

Waiver of Written Option

Where there was a written contract of lease with option to purchase, a waiver of such option could not be shown by oral testimony that lessee prior to time for exercising option made statements that he did not intend to purchase the property if he could get certain other property he was interested in. *Fiers v. Jacobson*, 123 M 242, 211 P 2d 968.

When Escrow May Modify Contract for a Deed

While a deed to land is an "agreement" which, when delivered, may modify a contract for the deed, a deed deposited in escrow is but an escrow, does not pass title and can modify the contract only on a clear showing that the opposing party

knew of the recitals in the deed and acceded thereto, and that the deed and contract were parts of the same transaction. *Hollensteiner v. Anderson*, 78 M 122, 129, 252 P 796.

When Oral Agreement Fully Executed

In an action to foreclose a chattel mortgage securing certain promissory notes, in which the defense was that the maturity of the notes had been extended two years by an executed oral agreement, to-wit, by payment of \$1,000 in consideration of such extension, held, that immediately upon payment of the consideration the agreement became fully executed and effective to modify the written contract of the parties under this section. *Griffiths v. Thrasher*, 95 M 210, 221, 26 P 2d 995.

Id. The date when an oral agreement takes effect as altering a written contract within the meaning of this section, is the date when it is executed.

13-908. (7570) Extinction by cancellation, etc. The destruction or cancellation of a written contract, or of the signature of the parties liable thereon, with intent to extinguish the obligation thereof, extinguishes it as to all the parties consenting to the act.

History: En. Sec. 2282, Civ. C. 1895; re-en. Sec. 5068, Rev. C. 1907; re-en. Sec. 7570, R. C. M. 1921. Cal. Civ. Sec. 1699.

References

Bauer v. Monroe, 117 M 306, 313, 158 P 2d 485.

13-909. (7571) Extinction by intentional destruction, cancellation or alteration. The intentional destruction, cancellation, or material alteration of a written contract by a party entitled to any benefit under it, or with his consent, extinguishes all the executory obligations of the contract in his favor against parties who do not consent to the act.

History: En. Sec. 2283, Civ. C. 1895; re-en. Sec. 5069, Rev. C. 1907; re-en. Sec. 7571, R. C. M. 1921. Cal. Civ. C. Sec. 1700. Field Civ. C. Sec. 845.

Operation and Effect

In a suit on a promissory note, an allegation of the answer that the date of the note "has been fraudulently changed by the plaintiff" is a mere conclusion, and insufficient to tender issue as to an intentional, material alteration by the plaintiff precluding recovery under this section; and, where the note was written by the plaintiff's agent at the beginning of a new year, it is not error to permit such agent to testify that he wrote "1904" instead of "1905." *McDonald v. Klenze*, 52 M 142, 146, 157 P 175.

13-910. (7572) Alteration of duplicate, not to prejudice. Where a contract is executed in duplicate, an alteration or destruction of one copy, while the other exists, is not within the provisions of the last section.

References

Cited or applied as section 2281, Civil Code, in *Gaffney Merchantile Co. v. Hopkins*, 21 M 13, 17, 52 P 561; *Easterly v. Jackson*, 29 M 496, 502, 75 P 357; as section 5067, Revised Codes, in *Schwab v. McVey*, 54 M 422, 424, 171 P 277; *Crosby v. Robbins*, 56 M 179, 189, 182 P 122; *Cobb v. Warren*, 64 M 10, 18, 208 P 928; *Nitsche v. Security Benefit Assn. et al.*, 78 M 532, 255 P 1052; *Orem v. Hansen Packing Co.*, 91 M 222, 229, 7 P 2d 546; *Smith v. Gunniss*, 115 M 362, 385, 144 P 2d 186; *Hart v. Barron*, 122 M 350, 204 P 2d 797, 807.

Collateral References

Contracts—238(2).

17 C.J.S. Contracts § 377.

12 Am. Jur. 1004, Contracts, §§ 427-429.

Collateral References

Contracts—269, 272 and other particular topics.

17 C.J.S. Contracts §§ 386, 434.

The legal effect of the alteration of a written contract is to extinguish all the executory obligations of the contract in favor of the party responsible for it, as against the party who does not consent, and the former cannot maintain an action on the contract in either its original or altered form; while the non-consenting party loses no right, and is not required to rescind or repudiate the contract as it actually was made, but may ignore the change and hold the party at fault to the contract as originally made. *Smith v. Barnes*, 51 M 202, 212, 149 P 963.

Collateral References

Contracts—269, 272 and other particular topics.

17 C.J.S. Contracts §§ 386, 434.

History: En. Sec. 2284, Civ. C. 1895;
re-en. Sec. 5070, Rev. C. 1907; re-en. Sec.
7572, R. C. M. 1921. Cal. Civ. Sec. 1701.
Field Civ. C. Sec. 846.

Collateral References

Alteration of Instruments 2; Con-
tracts 269, 272.

3 C.J.S. Alteration of Instruments § 4;
17 C.J.S. Contracts §§ 386, 434.

TITLE 14

COOPERATIVES

- Chapter 1. Credit unions, 14-101 to 14-129.
2. Cooperative associations, 14-201 to 14-222.
 3. Cooperative agricultural corporations and districts, 14-301 to 14-331.
 4. Cooperative marketing act, 14-401 to 14-429.
 5. Rural electric cooperative act, 14-501 to 14-531.

CHAPTER 1

CREDIT UNIONS

- Section 14-101. Purpose—definition of credit unions.
- 14-102. Incorporation of credit union association.
- 14-103. Certified copy of articles of incorporation as evidence.
- 14-104. Evidence of corporate character.
- 14-105. By-laws.
- 14-106. Supervision of credit unions by state examiner—fee for examinations.
- 14-107. Restriction on use of words “credit union” in name.
- 14-108. Powers of credit unions.
- 14-109. Membership.
- 14-110. Penalty for failure to report—revocation.
- 14-111. Fiscal year—meetings.
- 14-112. Elections.
- 14-113. Directors and officers—duty of directors.
- 14-114. Credit committee—powers and duties.
- 14-115. Supervisory committee—powers and duties.
- 14-116. Capital—lien on shares and deposits as security for loan—entrance fee may be provided for.
- 14-117. Minors—powers.
- 14-118. Rates of interest.
- 14-119. Power to borrow.
- 14-120. Loans.
- 14-121. Reserves.
- 14-122. Dividends.
- 14-123. Expulsion—withdrawal.
- 14-124. Dissolution.
- 14-125. Change in place of business.
- 14-126. Taxation.
- 14-127. Disposal of fees—fee for filing and recording articles of incorporation.
- 14-128. Application of act.
- 14-129. Insolvency or impairment of credit unions.

14-101. (6109.12) Purpose—definition of credit unions. A credit union is a cooperative society incorporated for the twofold purpose of promoting thrift among its members and creating a source of credit for them at legitimate rates of interest for provident purposes, and shall be known in this act as credit union associations, and shall be under the supervision of the state examiner and ex-officio superintendent of banks whose duty it shall be to enforce all laws with respect thereto. Such organizations shall have continual succession and shall be organized under and governed solely by the provisions of this act.

History: En. Sec. 1, Ch. 105, L. 1929.

14-102. (6109.13) Incorporation of credit union association. Whenever any number of persons not less than five (5) shall desire to incorporate a credit union association having for its object the conduct and operation of such an association as defined in this act they shall prepare and file articles of incorporation to that effect in the manner in this act specified; such articles shall be signed, sealed, and acknowledged in the form now provided by the statutes of this state for the conveyance of real estate and shall include the following:

1. The name shall not be the same or too closely resembling that in use by any existing corporation established under the laws of this state. The words credit union shall form a part of the name of the association, and no corporation not organized under this act shall be entitled to use a name embodying said combination of words, provided any associations now existing may continue their present names.

2. The principal office, or place of business of the association shall be designated in said articles and shall be within this state.

3. The par value of the shares of the credit union which shall not exceed ten dollars (\$10.00) each.

4. A provision that such association is organized under this act for the purposes herein expressed.

5. The names and residences of the persons who subscribe and acknowledge the said declaration, a majority of whom shall be citizens of this state and shall thereafter be called incorporators.

History: En. Sec. 2, Ch. 105, L. 1929.

14-103. (6109.14) Certified copy of articles of incorporation as evidence. A certified copy of any articles of incorporation filed in pursuance of this act must be received in all courts and other places as prima facie evidence of the facts therein stated.

History: En. Sec. 3, Ch. 105, L. 1929

14-104. (6109.15) Evidence of corporate character. The certificate issued by the secretary of state in pursuance of this act, or a certificate issued by the superintendent of banks setting forth that any association has fully complied with the provisions of this act, and is lawfully authorized to transact business in this state shall be admitted in all courts of this state, and shall be prima facie evidence of the corporate character and capacity of such association, and of its right to transact business in this state excepting in an action prosecuted by the state in the nature of quo warranto.

History: En. Sec. 4, Ch. 105, L. 1929.

14-105. (6109.16) By-laws. Contemporaneously with or immediately following the execution of said articles of incorporation provided for in the preceding sections the incorporators then acting in capacity of directors shall adopt appropriate by-laws to govern and prescribe the method and the officers by whom the business of the association shall be conducted. The by-laws shall be in conformity with the provisions of this act, and at all times during regular hours of business shall be open to inspection of the members at its principal place of business. The by-laws, among other things, shall especially provide for the character and method of conducting the

business of the corporation, with rules governing the addition of members, the sale of its shares, the amount of membership fee; provide for the annual meeting of the shareholders; for the annual election and qualification of directors and for the term and period during which the directors shall serve; provided that the said term or period for all directors shall not be less than one nor more than three (3) years, and that the directors shall be so elected that as soon as possible the term of an equal number shall expire each year; for the appointment of officers; for the adoption, ratification and amendment of the by-laws, and which adoption, ratification and amendment may be made either by the stockholders or board of directors; for the method of voting at such annual meeting and for the periodical investigation of the business and condition of such association. Provided, however, that no by-laws and no change or amendment thereof shall be effective until first approved by the state examiner and ex-officio superintendent of banks and provided further that no such association shall commence the transaction of business as such until the by-laws are first approved by the superintendent of banks.

History: En. Sec. 5, Ch. 105, L. 1929.

14-106. (6109.17) Supervision of credit unions by state examiner—fee for examinations. Credit unions shall be under the supervision of the state examiner of the state of Montana. They shall report to him at least semi-annually on or before June thirtieth (30th) and December thirty-first (31st) of each year. The state examiner shall examine all credit unions doing business in this state at least once a year. Also whenever ten per centum (10%) of the subscribed stock of any credit union files a written application with said state examiner requesting him to make a special examination of said credit union he shall forthwith examine the same, and the findings of the examiner to be available to the petitioners and the board of directors of the credit union notwithstanding any other provisions of law.

For each examination of a credit union by the state examiner, the association examined shall pay to the state treasurer a fee at the rate of thirty dollars (\$30.00) a day for each person engaged in the examination plus the necessary transportation expenses and per diem at the rate currently in effect for all state and county employees.

History: En. Sec. 6, Ch. 105, L. 1929;
amd. Sec. 1, Ch. 136, L. 1955.

14-107. (6109.18) Restriction on use of words "credit union" in name. It shall be a misdemeanor for any person, association, copartnership or corporation (except corporations organized in accordance with the provisions of this act) to use the words credit union in their name or title.

History: En. Sec. 7, Ch. 105, L. 1929.

14-108. (6109.19) Powers of credit unions. A credit union shall have the following powers:

(a) To receive the savings of its members either as payment on shares or as deposits (including the right to conduct Christmas clubs, vacation clubs and other such thrift organizations within the membership).

(b) To make loans to members for provident or productive purposes.

(c) To make loans to a cooperative society or other organization having membership in the credit union.

(d) To deposit in state and national banks and, to an extent which shall not exceed twenty-five per centum (25%) of its capital, invest in the paid-up shares of building and loan associations and of other credit unions.

(e) To invest in any investment legal for savings banks or for trust funds in the state.

(f) To borrow money as hereinafter indicated.

(g) To own and hold real and personal property.

History: En. Sec. 8, Ch. 105, L. 1929.

14-109. (6109.20) Membership. Credit union membership shall consist of the incorporators and such other persons as may be elected to membership and subscribe to at least one share, pay the initial installment thereon and the entrance fee. Organization (incorporated or otherwise) composed for the most part of the same general group as the credit union membership may be members. Credit union organization shall be limited to groups (of both large and small membership) having a common bond of occupation, or association or to groups within a well-defined neighborhood, community or rural district.

History: En. Sec. 9, Ch. 105, L. 1929.

14-110. (6109.21) Penalty for failure to report—revocation. For failure to file reports when due, unless excused for cause, the credit union shall pay to the treasurer of the state five dollars (\$5.00) for each day of its delinquency. If the said state examiner and ex-officio superintendent of banks determine that the credit union is violating the provisions of this act, or is insolvent, the said state examiner and ex-officio superintendent of banks may serve notice on the credit union of his intention to revoke the certificate of approval. If, for a period of fifteen (15) days after said notice, said violation continues, the said state examiner and ex-officio superintendent of banks may revoke said certificate and take possession of the business and property of said credit union and maintain possession until such time as he shall permit it to continue business or its affairs are finally liquidated. He may take similar action if said report remains in arrears for more than fifteen (15) days.

History: En. Sec. 10, Ch. 105, L. 1929.

14-111. (6109.22) Fiscal year—meetings. The fiscal year of all credit unions shall end December thirty-first (31st). Special meetings may be held in the manner indicated in the by-laws. At all meetings a member shall have but a single vote whatever his share holdings. To amend the by-laws, the proposed amendment must be contained in the call for the meeting and it must be approved by three-fourths ($\frac{3}{4}$) of the members then present (which number must constitute a quorum) and by the said state examiner and ex-officio superintendent of banks. There shall be no voting by proxy, a member other than a natural person casting a single vote through a delegated agent.

History: En. Sec. 11, Ch. 105, L. 1929.

14-112. (6109.23) Elections. At the annual meeting (the organization meeting shall be the first annual meeting) the credit union shall elect a board of directors of not less than five (5) members, a credit committee of not less than three (3) members and a supervisory committee of three (3) members, all to hold office for such terms respectively as the by-laws provide and until successors qualify. A record of the names and addresses of the members of the board and committees and the officers shall be filed with the state examiner and ex-officio superintendent of banks within ten (10) days of their election.

History: En. Sec. 12, Ch. 105, L. 1929.

14-113. (6109.24) Directors and officers—duty of directors. At their first meeting the directors shall elect from their own number a president, vice-president, treasurer and clerk, of whom the last two named may be the same individual. It shall be the duty of the directors to have general management of the affairs of the credit union, particularly:

- (a) To act on applications for membership.
- (b) To determine interest rates on loans and on deposits.
- (c) To fix the amount of the surety bond which shall be required of all officers and employees handling money.
- (d) To declare dividends, and to transmit to the members recommended amendments to the by-laws.
- (e) To fill vacancies in the board and in the credit committee until successors are chosen and qualify.
- (f) To determine the maximum individual share holdings and the maximum individual loan which can be made with and without security.
- (g) To have charge of investments other than loans to members.

The duties of the officers shall be as determined in the by-laws, except that the treasurer shall be the general manager. No member of the board or of either committee shall, as such, be compensated.

History: En. Sec. 13, Ch. 105, L. 1929.

14-114. (6109.25) Credit committee—powers and duties. The credit committee shall have the general supervision of all loans to members. Applications for loans shall be on a form, prepared by the credit committee, and all applications shall set forth the purpose for which the loan is desired, the security, if any, offered, and such other data as may be required. Within the meaning of this section an assignment of shares or deposits or the endorsement of a note may be deemed security. At least a majority of the members of the credit committee shall pass on all loans and approval must be unanimous. The credit committee shall meet as often as may be necessary after due notice to each member.

History: En. Sec. 14, Ch. 105, L. 1929.

14-115. (6109.26) Supervisory committee — powers and duties. The supervisory committee shall:

- (a) Make an examination of the affairs of the credit union at least quarterly, including an audit of its books and, in the event said committee feels such action to be necessary, it shall call the members together thereafter and submit to them its report.

(b) Make an annual audit and report and submit the same at the annual meeting of the members.

(c) By unanimous vote, if it deem such action to be necessary to the proper conduct of the credit union, suspend any officer, director or member of committee and call the members together to act on such suspension. The members at said meeting may sustain such suspension and remove such officer permanently or may reinstate said officer.

By majority vote the supervisory committee may call a special meeting of the members to consider any matter submitted to it by said committee. The said committee shall fill vacancies in its own membership.

History: En. Sec. 15, Ch. 105, L. 1929.

14-116. (6109.27) Capital—lien on shares and deposits as security for loan—entrance fee may be provided for. The capital of a credit union shall consist of the payments that have been made to it by the several members thereof on shares. The credit union shall have a lien on the shares and deposits of a member for any sum due to the credit union from said member or for any loan endorsed by him. A credit union may charge an entrance fee as may be provided by the by-laws.

History: En. Sec. 16, Ch. 105, L. 1929.

14-117. (6109.28) Minors—powers. Shares may be issued and deposits received in the name of a minor or in trust in such manner as the by-laws may provide. The name of the beneficiary must be disclosed to the credit union.

History: En. Sec. 17, Ch. 105, L. 1929.

14-118. (6109.29) Rates of interest. Interest rates on loans made by a credit union shall not exceed one per centum (1%) a month on unpaid balances.

History: En. Sec. 18, Ch. 105, L. 1929.

14-119. (6109.30) Power to borrow. A credit union may borrow from any source in total sum which shall not exceed fifty per centum (50%) of its assets.

History: En. Sec. 19, Ch. 105, L. 1929.

14-120. (6109.31) Loans. A credit union may loan to members. Loans must be for a provident or productive purpose and are made subject to the conditions contained in the by-laws. A borrower may repay his loan in whole or in part any day the office of the credit union is open for business. No director, officer or member of committee may borrow from the credit union in which he holds office beyond the amount of his holdings in it in shares and deposits, nor may he endorse for borrowers.

History: En. Sec. 20, Ch. 105, L. 1929.

14-121. (6109.32) Reserves. All entrance fees (which may be provided by the by-laws for failure to make repayments on loans and payments on shares when due), and each year, before the declaration of a dividend, twenty per centum (20%) of the net earnings, shall be set aside as a reserve fund which shall be kept liquid and intact and not loaned out to members, and shall belong to the corporation to be used as a reserve

against bad loans and not be distributed except in case of liquidation; provided, however, that when the regular reserve thus established shall equal ten per centum (10%) of the total amount of members' shareholdings, no further transfer of net earnings to such regular reserve shall be required except such amounts not in excess of twenty per centum (20%) of the net earnings as may be needed to maintain this ten per centum (10%) ratio. In addition to such regular reserve, special reserves to protect the interests of members shall be established when required by the state examiner.

History: En. Sec. 21, Ch. 105, L. 1929;
amd. Sec. 1, Ch. 187, L. 1955.

14-122. (6109.33) Dividends. On recommendation of the directors, a credit union may, at the end of the fiscal year, declare a dividend from net earnings, which dividend shall be paid on all shares outstanding at the end of the fiscal year. Shares which become fully paid up during the year shall be entitled to a proportional part of said dividend calculated from the first day of the month following such payment in full.

History: En. Sec. 22, Ch. 105, L. 1929.

14-123. (6109.34) Expulsion—withdrawal. A member may be expelled by a two-thirds ($\frac{2}{3}$) vote of the members present at a special meeting called to consider the matter but only after a hearing. Any member may withdraw from the credit union at any time but notice of withdrawal may be required. All amounts paid on shares or as deposits of an expelled or withdrawing member, with any dividends or interest accredited thereto, to the date thereof, shall, as funds become available and after deducting all amounts due from the member to the credit union, be paid to him. The credit union may require sixty (60) days notice of intention to withdraw shares and thirty (30) days notice of intention to withdraw deposits. Withdrawing or expelled members shall have no further rights in the credit union but are not, by such expulsion or withdrawal, released from any remaining liability to the credit union.

History: En. Sec. 23, Ch. 105, L. 1929.

14-124. (6109.35) Dissolution. The process of voluntary dissolution shall be as follows:

(a) At a meeting called for the purpose (notice of which purpose must be contained in the call), four-fifths ($\frac{4}{5}$) of the entire membership of the credit union may vote to dissolve the credit union.

(b) Thereupon they file with the said state examiner and ex-officio superintendent of banks a statement of their consent to dissolution, attested by a majority of the officers and including the names and addresses of the officers and directors.

(c) The state examiner and ex-officio superintendent of banks determine whether or not the credit union is solvent. If such is the fact he issues in duplicate a certificate to the effect that this section has been complied with.

(d) The certificate is filed with the county clerk of the county in which the credit union is located, whereupon the credit union is dissolved and shall cease to carry on business except for the purpose of liquidation.

(e) The credit union shall continue in existence for the purpose of discharging its debts, collecting and distributing its assets and doing all other acts required in order to wind up its business, and may sue and be sued for the purpose of enforcing such debts and obligations until its affairs are fully adjusted and wound up, for three (3) years.

History: En. Sec 24, Ch. 105, L. 1929.

14-125. (6109.36) Change in place of business. A credit union may change its place of business on written notice to said state examiner and ex-officio superintendent of banks.

History: En. Sec. 25, Ch. 105, L. 1929.

14-126. (6109.37) Taxation. Every credit union shall be assessed for and pay taxes upon its office furniture and fixtures and all real estate acquired in the course of its business. The amount standing to the credit of each member of any such credit union, upon its books, shall be considered and held as the individual credit of each member, and each member shall list the shares held by him for taxation, at their real value in money, in the county of his residence, the same as other credits are listed, except shares upon which loans have been made, or money advanced, by the credit union, and as to such shares they shall be listed for taxation at the net cash value of the stock, to be ascertained by deducting the loan from the cash value of the shares. The shares of a credit union shall not be subject to a stock transfer tax when issued by the corporation or when transferred from one member to another.

History: En. Sec. 26, Ch. 105, L. 1929.

14-127. (6109.38) Disposal of fees—fee for filing and recording articles of incorporation. All fees and expenses collected by the state examiner and ex-officio superintendent of banks from credit unions for examination shall be deposited with the state treasurer for the credit of the general fund. The secretary of state shall charge a flat fee of five dollars (\$5.00) for filing and recording the articles of incorporation of credit unions, which fee shall be in lieu of other filing fees.

History: En. Sec. 27, Ch. 105, L. 1929.

14-128. (6109.39) Application of act. Nothing contained in this act shall apply to persons or corporations engaged in the business of loaning money under the provisions of the banking, building and loan, and other laws of the state of Montana. This act to apply to and govern only those doing business as credit union associations.

History: En. Sec. 28, Ch. 105, L. 1929.

14-129. Insolvency or impairment of credit unions. Whenever it shall appear to the state examiner that the affairs of any credit union are in an unsound condition, or that it is conducting its business in an unsafe or unlawful manner, the state examiner may take possession of all books, records and assets of every description of such credit union and hold and retain the possession of same pending the further proceedings herein specified. Should the board of directors, secretary or person in charge of such credit union refuse to permit the state examiner to take possession as aforesaid, the

state examiner shall communicate such fact to the attorney general, whereupon it shall become the duty of the attorney general at once to institute such proceedings as may be necessary to place the state examiner in immediate possession of the property of such credit union. Upon taking possession of the effects of the credit union as aforesaid, the state examiner shall prepare a full and true statement of the affairs and condition of such credit union, including an itemized statement of its assets and liabilities and shall receive and collect all debts, dues and claims belonging to it and pay the immediate and reasonable expenses of his trust. When the condition of such credit union has been fully ascertained and it shall appear that the affairs of said credit union are in fact in an unsound condition, the state examiner shall at once notify, in writing, the board of directors of such credit union of his decision, giving them twenty (20) days in which to restore the affairs of such credit union to a sound condition. Meanwhile, the state examiner shall remain in charge of the books, records and assets of every description of such credit union, attend, or be represented, at all directors and shareholders meetings held, suggest such steps as he may deem necessary to restore such credit union to a sound condition; and if same is not done within such twenty (20) days, he shall report the facts to the attorney general and it shall thereupon become the duty of the attorney general to institute proceedings in the district court of the county in which such credit union has its principal place of business, for the appointment of the state examiner as receiver and as such he is authorized to collect all moneys due such credit union and to do such other acts as are necessary to conserve its assets and business, and he shall proceed to liquidate its affairs. He shall have general and inclusive power and authority, except as otherwise limited by law, to do any and all acts, to take any and all steps necessary, or, in his discretion, desirable for the protection of the property and assets of such credit union and the speedy and economical liquidation of its assets and affairs and the payment of its creditors, or for the reopening and resumption of business of said credit union where that is practicable or desirable. He may institute in his own name as state examiner, or in the name of the credit union, such suits and actions and other legal proceedings as he deems expedient for such purposes, and by making application to the district court of the county in which such credit union is located, or to the judge thereof, in chambers, may, upon proper and sufficient showing of cause therefor, procure an order to sell, compromise or compound any bad or doubtful debt or claim, and to sell and dispose of any or all the assets, which sale may be made to shareholders, officers, directors, or others interested in such credit union, on consent of the court. On such proceedings the credit union shall be made a party by notice issued on order of the court or judge, in lieu of summons, but served in like manner, and the hearing of any such application or petition by the state examiner may be had at any time, either in term or vacation in court, or in chambers, as the court may order, after said credit union has had five (5) days notice of such application.

History: En. Sec. 1, Ch. 151, L. 1955.

CHAPTER 2

COOPERATIVE ASSOCIATIONS

- Section 14-201. Incorporation of cooperative associations.
 14-202. Limit on amount of common stock person may hold.
 14-203. First meeting.
 14-204. Certificate of incorporation—amendment of articles of incorporation.
 14-205. Powers of such associations.
 14-206. Board of directors—officers—by-laws.
 14-207. Classes of stock—powers of stockholders of preferred and common stock—forfeiture for nonpayment of installments.
 14-208. Assignment of stock.
 14-209. Exemptions—shares of decedents.
 14-210. Increase of membership.
 14-211. Reserved power of regulation.
 14-212. Stockholders voting by mail.
 14-213. Disposal of earnings—dividends—reserve fund—educational fund.
 14-214. Distribution of profits or net earnings—dissolution of association.
 14-215. Benefits of act available to existing associations.
 14-216. Consolidation of cooperative associations.
 14-217. Terms and certificate of consolidation.
 14-218. Effect of consolidation.
 14-219. Obligation of contracts preserved.
 14-220. Restrictions upon use of terms in corporate or firm name.
 14-221. Duty of secretary of state.
 14-222. Violation of law a misdemeanor—penalty.

14-201. (6375) Incorporation of cooperative associations. Whenever any number of persons, not less than three, nor more than seven, may desire to become incorporated as a cooperative association for the purpose of trade, or of prosecuting any branch of industry, or the purchase and distribution of commodities for consumption, or in the borrowing or lending of money among members for industrial purposes, they shall make a statement to that effect under their hands, duly acknowledged by a notary public, in the manner provided for the acknowledgment of deeds, setting forth the name of the proposed corporation, its capital stock, its location, and duration of the association, and the particular branch or branches of industry which they intend to prosecute, which statement shall be filed in the office of the secretary of state as the articles of incorporation of the association. The secretary of state shall thereupon issue to such persons a license as commissioners to open books for subscription to the capital stock of such corporation, at such time and place as they may determine, for which he shall receive the fee of five dollars (\$5.00).

History: En. Sec. 870, Civ. C. 1895; re-en. Sec. 4210, Rev. C. 1907; re-en. Sec. 6375, R. C. M. 1921; amd. Sec. 1, Ch. 273, L. 1955. Cal. Civ. C. Sec. 653b.

Operation and Effect

The provisions of section 15-811, declaring that the directors and trustees of a corporation who fail to file with the county clerk and recorder of the county of its principal place of business an annual report of its condition shall jointly and severally be liable for all corporate debts or judgments then existing, or which may

thereafter be incurred, until such report is made and filed, are applicable to cooperative associations organized for profit. *Anderson v. Equity Co-operative Assn.*, 67 M 291, 292, 215 P 802.

References

Gallatin Farmers Co. v. Shannon, 109 M 155, 157, 93 P 2d 953.

Collateral References

Corporations—§3-26.
 43 C.J.S. Industrial Co-operative Societies § 2.

14-202. (6376) Limit on amount of common stock person may hold. No person shall be permitted to subscribe for or control or own more or less than one share of the common stock of such association.

History: En. Sec. 871, Civ. C. 1895; re-en. Sec. 4211, Rev. C. 1907; re-en. Sec. 6376, R. C. M. 1921; amd. Sec. 1, Ch. 135, L. 1933.

Collateral References

Corporations—87.
43 C.J.S. Industrial Co-operative Societies § 7.

14-203. (6377) First meeting. As soon as ten (10) or more shares of the capital stock shall be subscribed, the commissioners shall convene a meeting of the subscribers for the purpose of electing directors, adopting by-laws, and transacting such other business as shall properly come before them. Notice thereof shall be given by depositing same in the postoffice, properly addressed, to each subscriber, at least ten (10) days before the time fixed, stating the object, time, and place of said meeting. Directors of associations organized under this act shall be elected by the stockholders, and hold their office for such period of time as shall be provided in the by-laws.

History: En. Sec. 872, Civ. C. 1895; re-en. Sec. 4212, Rev. C. 1907; re-en. Sec. 6377, R. C. M. 1921; amd. Sec. 2, Ch. 273, L. 1955.

Collateral References

Corporations—15-25, 283, 291.
43 C.J.S. Industrial Co-operative Societies § 2.

14-204. (6378) Certificate of incorporation—amendment of articles of incorporation. The commissioners shall make a full report of their proceedings, including therein a copy of the notice provided for in the preceding section, a copy of the subscription list, a copy of the by-laws adopted by the association, and the names of the directors elected and their respective terms of office, which report shall be sworn to by at least a majority of the commissioners, and shall be filed in the office of the secretary of state. The secretary of state shall thereupon issue a certificate of the complete organization of the association, making a part thereof a copy of all papers filed in his office, in and about the organization, and duly authenticated, under his hand and seal of the state, for which he shall receive the sum of five dollars (\$5.00), and thereupon a certified copy of said certificate shall be filed in the office of the county clerk in which the principal office of the association is located. Upon the filing of said certified copy, the association shall be deemed to be fully organized and may proceed to business. At any time after the filing of the certificate of complete organization, the articles of incorporation may be amended. Any amendment of the articles of incorporation shall first be approved by two-thirds of the directors and then adopted by a vote of not less than two-thirds of those stockholders voting thereon at any regular meeting of the stockholders or at a special meeting of the stockholders called for that purpose. A certificate setting forth such amendment shall be executed and acknowledged on behalf of the association by its president or vice-president, and its corporate seal affixed thereto and attested by its secretary. Such certificate shall be filed in the office of the secretary of state who shall thereupon issue a certificate of amendment of the articles of incorporation, for which he shall receive the sum of five dollars (\$5.00), and thereupon a certified copy of such certificate shall be filed in the office of the county clerk in which the principal office of the association is located.

History: En. Sec. 873, Civ. C. 1895; re-en. Sec. 4213, Rev. C. 1907; re-en. Sec. 6378, R. C. M. 1921; amd. Sec. 3, Ch. 273, L. 1955.

Collateral References

Corporations—21.
43 C.J.S. Industrial Co-operative Societies § 2.

14-205. (6379) Powers of such associations. Associations formed under this act shall be bodies corporate and politic for the period for which they are organized, not exceeding forty years; may sue and be sued; may have a common seal, which they may alter or renew at pleasure; may own, possess, and enjoy so much real and personal property as shall be necessary for the transaction of their business, and may sell and dispose of the same. They may borrow money and may pledge their property, both real and personal, to secure the payment thereof, and they shall have and exercise all powers necessary and requisite to carry into effect the objects for which they may be formed, and such as are usually exercised by co-operative associations, subject to all duties, restrictions, and liabilities set forth in the general laws in relation to similar corporations, except so far as the same may be limited or enlarged by this act.

History: En. Sec. 874, Civ. C. 1895;
re-en. Sec. 4214, Rev. C. 1907; re-en. Sec.
6379, R. C. M. 1921. Cal. Civ. C. Sec. 653b.

Collateral References

Corporations—370 et seq.

43 C.J.S. Industrial Co-operative Societies § 5.

14-206. (6380) Board of directors—officers—by-laws. The board of directors, who shall exercise the corporate powers invested in such association, shall consist of not less than three, as fixed by the by-laws of the association. The officers of the association shall be a president, vice-president, secretary and treasurer, and such others as may be designated by the by-laws, to be elected by the stockholders or by the board of directors, as provided by the by-laws. Only stockholders shall be elected directors, and only directors shall be elected president or vice-president. The offices of secretary and treasurer may be combined and the combined office designated as secretary-treasurer. The by-laws may provide that the territory in which the association has stockholders shall be divided into districts and that the directors shall be elected according to such districts, in which case the by-laws may specify the number of directors to be elected by each district, the manner and method of reapportioning the directors and of re-districting the territory covered by the association, and may provide that primary elections be held in each district by the stockholders residing therein to elect the directors apportioned to such districts with the result of all such primary elections to be ratified by the stockholders at the next regular meeting of the association. All by-laws shall be adopted by the stockholders of the association and may be amended at a meeting of the stockholders by a majority of those stockholders voting thereon, or as otherwise provided in the by-laws. Amendments of the by-laws shall be fully effective upon adoption as provided herein and need not be filed in the office of the secretary of state or county clerk.

History: En. Sec. 875, Civ. C. 1895;
re-en. Sec. 4215, Rev. C. 1907; re-en. Sec.
6380, R. C. M. 1921; amd. Sec. 4, Ch. 273,
L. 1955.

authorized the payment of rental. Noble
v. Farmers' Union Trading Co., 123 M 518,
216 P 2d 925.

Collateral References

Corporations—56, 281-295.

43 C.J.S. Industrial Co-operative Societies §§ 2 et seq., 6.

Stockholder's Authority to Sue

A single stockholder has no authority to bring suit on behalf of the corporation to quiet title to land for which the directors

14-207. (6381) Classes of stock—powers of stockholders of preferred and common stock—forfeiture for nonpayment of installments. The shares of stock shall not be less than ten dollars (\$10.00) nor more than five thousand dollars (\$5,000.00) per share, and may be made payable in installments. Every co-operative association may divide its shares of stock into preferred and common stock. The holders of preferred stock shall have no voting power and shall not participate in the management and affairs of the association, and the owners thereof shall share in the profits of the association to the extent of not exceeding six per cent (6%) per annum on the par value thereof. The common stock may be divided into classes of different values, and the owners thereof shall share in the profits of the association in proportion to the par value of their shares; provided, however, that the owners of said common stock in the different classes shall have the same power and vote in the association. Forfeiture of the stock for nonpayment of installments may be provided for in the by-laws and whenever a share of stock is forfeited, such share shall become the property of the association, and may be re-issued to any person already a holder of common stock; but any proceeds received from such re-issue, over and above the amount due on said share, by the association, shall be paid to the delinquent shareholder. The stock heretofore issued in classes of different par values by any co-operative association is hereby legalized and made valid.

History: En. Sec. 876, Civ. C. 1895; re-en. Sec. 4216, Rev. C. 1907; amd. Sec. 1, Ch. 3, L. 1909; re-en. Sec. 6381, R. C. M. 1921; amd. Sec. 2, Ch. 135, L. 1933.

"Dividends" Not Deductible as "Interest" in Determining Income Tax

Moneys paid by farmers' co-operative corporation created under Montana law to preferred stockholders constitute "dividends" and are not deductible as "interest" in determining income tax on ground that the stock creating proceeding was a nullity

so that the preferred stock certificates were required to be regarded as notes, where it appeared that holders of preferred stock held it as stock and not as a note or other promise to pay par value of the shares (citing secs. 14-201 et seq.). *Gallatin Farmers Co. v. Commissioner of Internal Revenue*, 132 F 2d 706, 707.

Collateral References

Corporations—60 et seq.
43 C.J.S. Industrial Co-operative Societies § 2 et seq.

14-208. (6382) Assignment of stock. No assignment of stock shall be made to any person who already owns stock, except by the consent of the board of directors, but stock may be assigned to the association at any time with the consent of the directors. On no question shall a stockholder have more than one (1) vote. Every assignment of stock on which there remains any portion unpaid shall be recorded in the books of the association, and each stockholder shall be jointly and severally liable with the association for the debts of the association to the extent of the amount which shall be unpaid upon the share held by him. No assignor shall be released from any such indebtedness by reason of any assignment of his share, but shall remain jointly liable therefor with the assignee.

History: En. Sec. 877, Civ. C. 1895; re-en. Sec. 4217, Rev. C. 1907; re-en. Sec. 6382, R. C. M. 1921; amd. Sec. 5, Ch. 273, L. 1955.

Collateral References

Corporations—111-149.
43 C.J.S. Industrial Co-operative Societies § 7.

14-209. (6383) Exemptions—shares of decedents. The share, not exceeding the par value of five hundred dollars, of each member shall be exempt from seizure on attachment, or sale under execution, and upon his

death shall be sold by the association, and the proceeds, after deducting all liabilities to the association, shall be delivered to his heirs.

History: En. Sec. 878, Civ. C. 1895; re-en. Sec. 4218, Rev. C. 1907; amd. Sec. 2, Ch. 3, L. 1909; re-en. Sec. 6383, R. C. M. 1921.

Collateral References

Exemptions⇒37.

35 C.J.S. Exemptions § 31.

14-210. (6384) Increase of membership. An association licensed to operate under this act may, by a majority of its stockholders, increase its membership in such manner as may be provided in its by-laws, not inconsistent with any of the provisions of this act.

History: En. Sec. 879, Civ. C. 1895; re-en. Sec. 4219, Rev. C. 1907; re-en. Sec. 6384, R. C. M. 1921.

Collateral References

Corporations⇒170.

43 C.J.S. Industrial Co-operative Societies § 7.

14-211. (6385) Reserved power of regulation. The legislative assembly hereby reserves the power to prescribe such regulations and provisions governing any and all associations incorporated under this act as it may deem advisable; and such regulations and provisions shall be binding on associations incorporated at the time such regulations may be made, as well as on those thereafter incorporated.

History: En. Sec. 880, Civ. C. 1895; re-en. Sec. 4220, Rev. C. 1907; re-en. Sec. 6385, R. C. M. 1921.

Collateral References

Constitutional Law⇒126.

16 C.J.S. Constitutional Law §§ 320, 336.

14-212. (6386) Stockholders voting by mail. At any regularly called general or special meeting of the stockholders of co-operative associations, a written vote received by mail from any absent stockholder, and signed by him, may be read in such meeting and shall be equivalent to a vote of each of the stockholders so signing; provided, he has been previously notified in writing of the exact motion or resolution upon which such vote is taken, and a copy of the same is forwarded with and attached to the vote so mailed by him.

History: En. Sec. 1, Ch. 83, L. 1915; re-en. Sec. 6386, R. C. M. 1921.

Collateral References

Corporations⇒197.

43 C.J.S. Industrial Co-operative Societies § 7.

14-213. (6387) Disposal of earnings—dividends—reserve fund—educational fund. The directors of a co-operative association, subject to revision by the stockholders at a general or special meeting may apportion the earnings of the association by first paying dividends on the paid up capital stock, not exceeding six per cent. (6%) per annum on the par value thereof, from the remaining funds, if any, accessible for dividend purposes, not less than five per cent. (5%) of the net profits for a reserve fund until an amount has accumulated in said reserve fund amounting to thirty per cent. (30%) of the paid up capital stock, and from the balance, if any, five per cent. (5%) for educational fund to be used for teaching co-operation, and the remaining of said profits, if any, by uniform dividends upon the amount of purchases of patrons and upon the wages and for salaries of employees, the amount of such uniform dividends on the amount of their purchases, which may be credited to the account of such patrons on account of capital

stock of the association; but in production association such as creameries, canneries, elevators, factories, and the like, dividends shall be on raw material delivered instead of on goods purchased. In case the association is both a selling and a productive concern, the dividends may be on both raw material delivered and on goods purchased by patrons.

History: En. Sec. 2, Ch. 83, L. 1915; re-en. Sec. 6387, R. C. M. 1921; amd. Sec. 3, Ch. 135, L. 1933.

Dividends Not Proper Deduction for Taxation

In an action to recover a corporation license tax exacted from a co-operative association under section 84-1502, and paid under protest, held that the amount of dividends paid on capital stock outstanding is not a proper deduction in determining its net income for taxation purposes, such dividends being neither an expense of the association nor a payment of interest on indebtedness. *Gallatin Farmers Co. v. Shannon*, 109 M 155, 158, 93 P 2d 953.

"Net Profits" and Other Terms Synonymous

The words "net profits" as used in this section, mean that part of the receipts of a co-operative association remaining after payment of operating expenses, and the terms "profits," "net earnings," "funds" and "earnings" used in it and the following section indiscriminately, mean the same thing. *Gallatin Farmers Co. v. Shannon*, 109 M 155, 158, 93 P 2d 953.

Patronage Dividends an Expense in Computing Tax

Patronage dividends which a cooperative association organized under sections 14-201 et seq., must pay under this section in

apportioning its earnings if there be money remaining after paying certain other items, are in effect refunds or rebates to customers, whether they be stockholders or not, and are to be treated as a necessary expense of the association in computing the net income upon which it must pay a license tax. *Gallatin Farmers Co. v. Shannon*, 109 M 155, 158, 93 P 2d 953.

"Patronage Dividends" Not Deductible as Business Expenses in Computing Income Tax—"May" Defined

Moneys paid by farmers' co-operative corporation created under Montana law as so-called patronage dividends out of its earnings to purchasers from it of farmers' commodities are not deductible in computing corporation's income tax as "ordinary and necessary business expenses," where it appeared that so-called patronage dividends were paid in violation of Montana statute. (Revenue Act 1938, Sec. 23 (a), 26 U. S. C. A. Int. Rev. Code, Sec. 23(a).) "May" means that directors may or may not apportion earnings, but if directors choose so to do, they must follow statutory method of apportionment. *Gallatin Farmers Co. v. Commissioner of Internal Revenue*, 132 F 2d 706, 708.

Collateral References

Corporations—150-160.

43 C.J.S. Industrial Co-operative Societies § 2 et seq.

14-214. (6388) Distribution of profits or net earnings—dissolution of association. The profits or net earnings of such associations shall be distributed to those entitled thereto, at such times as the by-laws shall prescribe, which shall be as often as once in twelve months. If such associations for five consecutive years shall fail to declare a dividend upon the shares of its paid-up capital, the holders of the majority of the par value of the issued and outstanding capital stock, by petition, setting forth such fact, may apply to the district court of the county, wherein is situated its principal place of business in this state, for its dissolution. If, upon hearing, the allegations of the petition are found to be true, the court may adjudge a dissolution of the association.

History: En. Sec. 3, Ch. 83, L. 1915; re-en. Sec. 6388, R. C. M. 1921.

Collateral References

Corporations—592, 601.

43 C.J.S. Industrial Co-operative Societies § 2.

14-215. (6389) Benefits of act available to existing associations. All co-operative corporations, companies, or associations heretofore organized and doing business under prior statutes, or which have attempted to so

organize and do business, shall have the benefit of all of the provisions of this act, and be bound thereby on filing with the secretary of state a written declaration, signed and sworn to by the president and secretary, to the effect that said co-operative company or association has by a majority vote of its stockholders decided to accept the benefits of and to be bound by the provisions of this act. No association organized under this act shall be required to do or perform anything not specially required herein in order to become a corporation, or to continue its business as such.

History: En. Sec. 4, Ch. 83, L. 1915;
re-en. Sec. 6389, R. C. M. 1921.

Collateral References

Corporations 13.
43 C.J.S. Industrial Co-operative Soci-
ties § 2 et seq.

14-216. (6390) Consolidation of cooperative associations. It shall be lawful for two or more cooperative associations formed, or which may be hereafter formed under the laws of the state of Montana, organized and doing business in the same county, to consolidate their capital stock, debts, liabilities, assets, property, and franchises in such manner and upon such terms as may be agreed upon by the board of directors of such associations desiring to consolidate their interests; but no such consolidation shall be made except upon the written request of a majority of the stockholders of each of such associations. When the directors of the constituent associations shall have agreed upon the terms and manner of consolidation, and name by which the corporation formed by the consolidation shall be known, they shall cause to be published a notice thereof at least once a week for four consecutive weeks in some newspaper published in the county where said consolidation is to be had; said notice shall contain the names of the constituent associations and the manner and terms of such consolidation. The said directors shall also call, within thirty days after such consolidation, a meeting of the stockholders of such constituent associations, upon due notice of the time and place, for the purpose of electing a board of directors for the consolidated association; the number of and the term for which said directors are to be elected shall be determined by the board of directors of the constituent associations.

History: En. Sec. 1, Ch. 140, L. 1917;
re-en. Sec. 6390, R. C. M. 1921.

Collateral References

Corporations 581-591.
43 C.J.S. Industrial Co-operative Soci-
ties § 2.

14-217. (6391) Terms and certificate of consolidation. Said terms of consolidation must provide that each stockholder in each association consolidating shall be given equal rights and privileges with every other stockholder in the same association. When said consolidation has been completed, a certificate thereof, showing the procedure and terms of said consolidation, and the names of the constituent associations, and the name adopted for the corporation formed by the consolidation, must be filed in the office of the county clerk of the county where said consolidation takes place; the said certificate shall also contain all the facts required by section 14-201; said certificate shall be signed and acknowledged by at least a majority of the directors of each of the constituent associations. A copy of said

certificate, duly certified by the county clerk and recorder, must also be filed in the office of the secretary of state.

History: En. Sec. 2, Ch. 140, L. 1917;
re-en. Sec. 6391, R. C. M. 1921.

14-218. (6392) Effect of consolidation. When the foregoing provisions have been complied with, the constituent associations named in said certificate shall be deemed and held to have become extinct, and said new association, under the name adopted, shall be deemed and held to have succeeded to all their several capital stock, properties, assets, contracts, and rights of action, and to be entitled to possess, enjoy, and enforce the same, and every part thereof, as fully and completely as either and every of its constituent associations might have done had no consolidation taken place. Said new association shall also be deemed and held to have become subrogated to its several constituents, and each thereof, in respect to all their contracts and agreements with other parties, and all their debts, obligations, and liabilities, of every kind and nature, to any person, persons, or corporations whomsoever or whatsoever, and said new association must sue or be sued in its own name in any and every case in which any or either of its constituents might have sued or may have been sued had no such consolidation been made.

History: En. Sec. 3, Ch. 140, L. 1917;
re-en. Sec. 6392, R. C. M. 1921.

14-219. (6393) Obligation of contracts preserved. Nothing in this act shall be construed to impair the obligation of any contract to which any of such constituents was a party at the date of said consolidation.

History: En. Sec. 4, Ch. 140, L. 1917;
re-en. Sec. 6393, R. C. M. 1921.

Collateral References

Corporations 589, 590.
43 C.J.S. Industrial Co-operative Societies § 1.

14-220. (6394) Restrictions upon use of terms in corporate or firm name. No association, person, firm, corporation, or co-partnership hereafter organized or doing business in this state shall be entitled to use the term "co-operative," "cooperation," "cooperator" as part of his, their, or its corporate firm, association, or other business name or title, unless incorporated under and in compliance with the provisions of this chapter; nor shall any corporation incorporated under the cooperative laws use the term "farmer" or "farmers" when less than one-half of its stockholders or members are farmers by occupation.

History: En. Sec. 1, Ch. 161, L. 1917;
re-en. Sec. 6394, R. C. M. 1921.

Collateral References

Corporations 45.
43 C.J.S. Industrial Co-operative Societies § 2.

14-221. (6395) Duty of secretary of state. The secretary of state shall not issue any certificate of incorporation to any corporation or association except in compliance with this act.

History: En. Sec. 2, Ch. 161, L. 1917;
re-en. Sec. 6395, R. C. M. 1921.

Collateral References

Corporations 18.
43 C.J.S. Industrial Co-operative Societies § 2.

14-222. (6396) Violation of law a misdemeanor—penalty. Any person, firm, corporation, or association violating any of the provisions of this act shall be guilty of a misdemeanor, and, upon conviction thereof, shall be fined in a sum not less than one hundred dollars nor more than one thousand dollars.

History: En. Sec. 3, Ch. 161, L. 1917;
re-en. Sec. 6396, R. C. M. 1921.

Collateral References

Corporations—324, 369.
43 C.J.S. Industrial Co-operative Soci-
ties § 8.

References

Anderson v. Equity Co-operative Assn.,
67 M 291, 292, 215 P 802.

CHAPTER 3

COOPERATIVE AGRICULTURAL CORPORATIONS AND DISTRICTS

- Section 14-301. Formation of agricultural corporations or cooperative districts.
14-302. Petition—contents and filing—bond.
14-303. Notice of hearing of petition.
14-304. Hearing of petition—findings of court—issuance of certificate of in-
corporation.
14-305. Directors to give notice of first meeting.
14-306. Procedure for receiving other members.
14-307. Lien of corporate indebtedness upon membership lands.
14-308. Creation of subdivisions or subdistricts.
14-309. Members and membership lands.
14-310. By-laws, adoption of.
14-311. By-laws—contents.
14-312. By-laws, recording and amending.
14-313. Board of directors—powers.
14-314. Directors, qualifications of—quorum—vacancies.
14-315. Election of directors.
14-316. Elections—how conducted—voting.
14-317. Meetings—how conducted—voting—election of proxies.
14-318. Indebtedness—how created—limitations.
14-319. Creation of debt—passage of resolution.
14-320. Notice of hearing—hearing—order of court.
14-321. Execution and record of mortgage—lien.
14-322. Foreclosure of mortgage—procedure—tax levy.
14-323. Withdrawal of lands—procedure.
14-324. Withdrawal—application to court for order.
14-325. Organization of districts by existing associations—procedure.
14-326. Dissenting stockholders—appraisal value of equity.
14-327. Errors—effect.
14-328. Order of court—appeals.
14-329. Existing corporate laws applicable.
14-330. Cooperative agricultural associations—ownership of enterprises—
powers.
14-331. Exception.

14-301. (6397) Formation of agricultural corporations or cooperative districts. At any time hereafter, any ten or more holders of title, or evidence of title, to agricultural, horticultural, or farm lands in this state, of an aggregate value of not less than seventy-five thousand dollars, who may desire to form a company, or district, for the purpose of promoting or improving the production, processing, storing, warehousing, marketing, of any or all agricultural, horticultural or farm or dairying products of the respective petitioners therefor, may incorporate themselves into an agricultural corporation, or cooperative agricultural district.

History: En. Sec. 1, Art. 1, Ch. 152, L. 1921; re-en. Sec. 6397, R. C. M. 1921.

Collateral References

Agriculture 6.

43 C.J.S. Industrial Co-operative Societies § 2.

2 Am. Jur. 444, Agriculture, §§ 51 et seq.

Co-operative marketing of farm products by producers' association. 25 ALR 1113.

Constitutionality of statutes relating to grading, packing, or branding of farm products. 73 ALR 1445.

Constitutionality and construction of farm aid laws. 92 ALR 768.

Constitutionality, construction, and application of statutes relating to the purchase of farm and dairy products from producers for purposes of resale. 117 ALR 347.

14-302. (6398) Petition — contents and filing — bond. Such persons must prepare, sign, acknowledge and file a petition with the clerk of the district court of the county in which the lands, or the greater portion of the lands, included in the petition are situate; such petition to state:

1. The name of the corporation, or district, proposed to be formed;
2. The purpose for which it is formed;
3. The place where its principal business is to be transacted;
4. The number of its directors, or trustees, which shall not be less than three, and the names and residences of those who are selected for the first three months, and until their successors are elected and qualified; provided, such directors, or trustees, shall at all times be resident freeholders in the state of Montana;
5. The names and addresses of the petitioners applying for such incorporation, or district, with a description of the lands which each owns and proposed to be submitted to said corporation or district, and the character of the same and their production; also a consent of the owners to submit the lands to the provisions hereof;
6. The assessed valuation of the land;
7. The term for which it is to exist, not exceeding forty years.
8. If shares, acres, production, or other evidences of membership are to be used, the basis for issuing the same, in either value, acreage, or production, shall be stated.
9. Such petition shall be accompanied by a map, giving location of the lands sought to be included in such corporation, or district; nothing herein to be construed as requiring such lands to be contiguous.

A bond in the sum of one thousand dollars, to be approved by the clerk, conditioned for the payment of all costs incurred in the creation of such corporation, or district, shall be filed with the petition.

History: En. Sec. 2, Art. 1, Ch. 152, L. 1921; re-en. Sec. 6398, R. C. M. 1921.

14-303. (6399) Notice of hearing of petition. Upon the filing of such petition the clerk of the district court wherein the same shall be filed shall set the same for hearing before said court at a time not less than ten nor more than twenty days from the date of filing such petition, and shall cause notice of such setting to be mailed or delivered to each of the persons purporting to be signers thereon, not less than ten days before such hearing, and post it in three public places in said county.

History: En. Sec. 3, Art. 1, Ch. 152, L. 1921; re-en. Sec. 6399, R. C. M. 1921.

14-304. (6400) Hearing of petition—findings of court—issuance of certificate of incorporation. At the time specified in the notice of hearing, a district judge of the state of Montana shall, in open court, hear said petition and the evidence offered in support thereof, and determine whether or not the requirements of this act have been complied with. If, upon such hearing, or adjournments thereof, as the court may order, the court does find that the petition substantially complies with the requirements of this act, and is true in all particulars, the court shall so find, and, in open court, shall enter upon its minutes and upon said petition, or attach thereto, its findings and order, to the effect that said petition complies with the requirements of this act and is true and correct in all particulars, as therein set forth, and its statements are supported by proper proof, and that such corporation, or district, is entitled to be created and become a body corporate. A duly certified copy of which petition, with the court's order, or any indorsements thereon, shall be filed with the secretary of state of the state of Montana, who shall, upon such filing, issue a certificate of incorporation under the seal of the state of Montana; duly certified copies of the petition, with the court's order, or indorsements thereon, shall also be filed with the county clerks and recorders of each county in which said corporation, or district, shall thereafter own or hold property or have property-holding memberships. Upon the issuance of such certificate, every corporation, or district, organized hereunder is hereby declared to be a quasi-public corporation for the promotion of public welfare, with all of the powers and authority of bodies corporate under the corporation laws of the state of Montana.

History: En. Sec. 4, Art. 1, Ch. 152, L. 1921; re-en. Sec. 6400, R. C. M. 1921.

14-305. (6401) Directors to give notice of first meeting. Within thirty days from and after the issuance of a certificate of incorporation, the persons named and designated in the petition to be directors, or trustees, for the first three months, shall cause a written notice to be mailed or delivered to each and every signer of the petition of a proposed first meeting of said corporation, or district, for the purpose of adopting a common seal, adopting by-laws, and providing for the issuance of stock, or other evidences of membership of the members thereof, and for the transaction of such other business as may properly come before a meeting of the stockholders or members of a corporation, or district, formed for the purposes named in the petition.

History: En. Sec. 5, Art. 1, Ch. 152, L. 1921; re-en. Sec. 6401, R. C. M. 1921.

14-306. (6402) Procedure for receiving other members. Whenever any corporation, or district, has been formed under the provisions hereof, it is authorized and directed to permit other holders of title, or evidence of title, of similar or like agricultural, horticultural, or farm lands within this state to become members thereof, upon such holder of title, or evidence of title, in manner and form as may be required by the laws of Montana and the rules of such corporation, or district, or its by-laws, applying for membership therein to the officers thereof by written application, duly acknowledged, containing a full, true and correct description of the lands owned by him and proposed to be contained in said corporation, or district; a state-

ment of his desire to become a member thereof, and his consent to submit his lands to the provisions hereof and to the administration of said corporation, or district, and its by-laws, and to its objects and purposes; and accompanying said application a map of the lands so owned by him and proposed to be submitted to said corporation, or district, its objects and purposes.

If said application shall be in proper form, and the applicant be the holder of title, or evidence of title, to the lands described, and the uses of said land as represented in said petition be similar to the uses of lands already included in said corporation, or district, a full, true, and correct copy of his application shall be made and filed in the office of principal place of business of the corporation, or district, and his original application shall be filed and recorded in the office of the county clerk and recorder of the county in which the lands, or the greater portion thereof, are situate, and he shall thereupon be entitled to evidence of temporary membership, in shares or units of membership, in similar manner as original members thereof, and the said lands described in the petition shall thereafter be construed to be a part of said corporation, or district, to all intents and purposes as though originally incorporated therein. Upon the consent of a majority of the members or stockholders given in the annual meeting or at a special meeting called as provided by law for that purpose, such new member or stockholder shall be entitled to full membership in such corporation, or district.

History: En. Sec. 6, Art. 1, Ch. 152, L. 1921; re-en. Sec. 6402, R. C. M. 1921.

14-307. (6403) Lien of corporate indebtedness upon membership lands.

From and after the date of the inclusion of any land or property as a member thereof in any corporation, or district, organized under the provisions hereof, all mortgage or bonded indebtedness thereafter created by such corporation, or district, shall be deemed a first lien upon such membership lands, to the extent of not to exceed five per cent of the assessed valuation thereof if the same shall be grazing or agricultural, and not to exceed ten per cent of the assessed valuation thereof if the same shall be horticultural or vegetable producing lands. The recording of the copy of the articles of incorporation, or petition to become a member of such corporation, or district, shall be notice to all subsequent lien claimants that such lands are subject to a first lien of not to exceed the amount specified herein; provided, nothing herein shall be construed as placing a limit upon the indebtedness that may be made a lien against any of the corporate or property assets of the corporation, or district, as distinguished from membership lands individually owned, and included therein for the purposes hereof.

History: En. Sec. 7, Art. 1, Ch. 152, L. 1921; re-en. Sec. 6403, R. C. M. 1921.

14-308. (6404) Creation of subdivisions or subdistricts. Any corporation, or district, organized under the provisions hereof shall have the power to create subdivisions, or subdistricts, of said corporation, or district, by geographical or other location, as shall best subserve the purposes of the corporation, or district, or the welfare of the membership of the corporation, or district, residing in the proposed subdivision, or subdistrict; provided,

any property owned or acquired by the subdivision, or subdistrict, thus created shall at all times be the property of the corporation, or district, and its members and membership lands subject to the objects, purposes and liabilities of the corporation, or district, as herein provided.

History: En. Sec. 8, Art. 1, Ch. 152, L.
1921; re-en. Sec. 6404, R. C. M. 1921.

14-309. (6405) Members and membership lands. The members of a corporation, or district, organized hereunder shall be called "members"; the lands included by such members shall be called "membership lands."

History: En. Sec. 9, Art. 1, Ch. 152, L.
1921; re-en. Sec. 6405, R. C. M. 1921.

14-310. (6406) By-laws, adoption of. Every corporation, or district, formed under this chapter, must, by majority action, at its organization meeting after incorporation, adopt a code of by-laws for its government, not inconsistent with the constitution and laws of this state.

History: En. Sec. 1, Art. 2, Ch. 152, L.
1921; re-en. Sec. 6406, R. C. M. 1921.

14-311. (6407) By-laws—contents. The by-laws, where no other provision is specially made, may provide for:

1. The time, place, and manner of calling and conducting meetings of stockholders, or members;
2. The number of stockholders, or members, or quantity of units of membership in acres, lands, or production, as shall constitute a quorum;
3. The mode of voting at stockholders' meetings, and the method of voting by proxy; provided, that the same shall not be inconsistent with any of the provisions hereof or the laws of this state;
4. The number of directors of the corporation, or district, and the time of the annual election of directors and the mode and manner of giving notice thereof; the officers, the manner of their election, their duties and tenure;
5. The directors having the power to sell, lease, mortgage, hypothecate, or otherwise dispose of the corporate assets of the corporation, or district, or any part thereof, as distinguished from membership lands.
6. The by-laws may also provide for the manner of creating subdivisions, or subdistricts, by geographical location, or otherwise, for local groups or subdivisions of the corporation, or district, as may promote the objects of the corporation, or district, generally or the welfare of the membership in the particular subdivision, or subdistrict; and may provide for local boards of directors, or executive committees, representing the board of directors, to manage the affairs of the subdivision, or subdistrict, thus created, subject to the direction and approval of the board of directors of the corporation, or district.

History: En. Sec. 2, Art. 2, Ch. 152, L.
1921; re-en. Sec. 6407, R. C. M. 1921.

14-312. (6408) By-laws, recording and amending. The by-laws shall be recorded, and may be amended as provided in section 15-303 of this code.

History: En. Sec. 3, Art. 2, Ch. 152, L.
1921; re-en. Sec. 6408, R. C. M. 1921.

14-313. (6409) Board of directors—powers. The corporate, or district, powers, business, and property of all corporations, or districts, formed under the provisions hereof must be exercised, conducted and controlled by a board, which shall never be less than three members; otherwise, the number of members of the board may be increased or diminished at any time by proper amendment of the by-laws with reference thereto. The directors shall have the power to sell, lease, mortgage, hypothecate, or otherwise dispose of the corporate assets of the corporation, or district, or any part thereof, as distinguished from membership lands.

History: En. Sec. 4, Art. 2, Ch. 152, L.
1921; re-en. Sec. 6409, R. C. M. 1921.

14-314. (6410) Directors, qualifications of — quorum — vacancies. No person shall be eligible to be a director of any corporation, or district, organized under the provisions hereof, who is not himself a member of the corporation, or district, and a resident agricultural freeholder in the state of Montana. A quorum of the board of directors shall at all times be necessary for the transaction of business; provided, if the by-laws or board of directors shall provide for an executive committee, a quorum of such committee shall have authority to carry on business. Whenever a vacancy occurs in the office of a director, unless the by-laws shall otherwise provide, such vacancy may be filled by appointment by the board of directors.

History: En. Sec. 5, Art. 2, Ch. 152, L.
1921; re-en. Sec. 6410, R. C. M. 1921.

14-315. (6411) Election of directors. Directors must be elected at the annual meeting, and may hold office for the term and in the manner as specified in the by-laws.

History: En. Sec. 6, Art. 2, Ch. 152, L.
1921; re-en. Sec. 6411, R. C. M. 1921.

14-316. (6412) Elections—how conducted—voting. All elections must be by ballot, and every stockholder, or member, or holder of a unit of membership in acres, production, or other evidence of membership shall have the right to vote in person or by a proxy in conformity with the provisions hereof, the constitution and laws of this state and the by-laws of the corporation, or district.

History: En. Sec. 7, Art. 2, Ch. 152, L.
1921; re-en. Sec. 6412, R. C. M. 1921.

14-317. (6413) Meetings—how conducted—voting—election of proxies. At the organization meeting or any meeting of the stockholders or members of a corporation, or district, organized under the provisions hereof, each member and each unit of membership in acres, production, or other evidence of membership, shall be entitled to vote in person or by proxy. Corporate action at such meeting shall be determined by a majority of the membership, and a majority of the acres, production, or units of membership, as may have been adopted. Any group of members of a subdivision, or subdistrict, of the corporation, or district, as may be defined and designated by the board of directors, or by-laws, shall, at a subdivision, or subdistrict, meeting called for the purpose, elect a delegate or proxy to represent all of the membership in the subdivision, or subdistrict, at any such meeting.

Where any subdivision, or subdistrict, fails to elect such delegate, any individual member may give proxy, provided no person shall be entitled to act as proxy who is not himself a member of the corporation, or district, and a resident, agricultural, or horticultural freeholder in the state of Montana for not less than three years immediately preceding such meeting.

History: En. Sec. 8, Art. 2, Ch. 152, L. 1921; re-en. Sec. 6413, R. C. M. 1921.

14-318. (6414) Indebtedness—how created—limitations. The board of directors, or other officers of a corporation, or district, organized under the provisions hereof, as such shall have no power to incur any debt or liability which will be a lien upon its membership lands, except in accordance with the terms and provisions hereof. When at a meeting of the directors of any corporation, or district, organized hereunder, of which meeting each director shall have received at least five days' written or telegraphic prior notice, it shall be determined to the interests of said corporation, or district, for the promotion of its objects and business to create an indebtedness of said corporation, or district, secured by a first lien or mortgage upon all of the membership lands to the extent allowed under the provisions hereof, such meeting shall pass and spread at length upon their minutes a resolution specifying the purposes for which such debt is to be created, the amount thereof, the rate of interest to be paid thereon, and the manner and form of evidencing the same, and any coupons for interest thereon, and authorizing, directing, and empowering the executive officers of the corporation, or district, to, upon the approval of the district court, as hereinafter provided for, make, execute and deliver bonds, notes, coupons, or other evidences of the debt, and mortgages, deeds of trust, or other instruments of mortgage and hypothecation for security of the same.

History: En. Sec. 1, Art. 3, Ch. 152, L. 1921; re-en. Sec. 6414, R. C. M. 1921.

14-319. (6415) Creation of debt—passage of resolution. Upon the passage of such resolution the executive officers of the corporation, or district, shall prepare and file their verified petition in the district court of the county of principal place of business of such corporation, or district, setting forth the fact of the passage of the resolution by the board of directors, the reason for the creation of such debt, and such other facts as may be necessary to fully advise the court with reference to such corporation, or district, its aims and objects and the purposes for which said debt is to be created and the money expended, and praying for the approval of the court for the creation of such debt and the mortgage and hypothecation of its membership lands as security therefor.

History: En. Sec. 2, Art. 3, Ch. 152, L. 1921; re-en. Sec. 6415, R. C. M. 1921.

14-320. (6416) Notice of hearing—hearing—order of court. (1) Upon presentation of such petition to the court, the court shall set the same for hearing at a time not less than twenty nor more than forty days from the date of filing thereof, and direct personal notice to be given to such members as are within the state of Montana, and by mail to such members without the state; and by publication in some newspaper of general circula-

tion in each of the counties in which membership lands to be affected are situated, for not less than two weeks prior to the hearing of said petition; which notice shall state the name of the corporation, or district, its principal place of business, and the fact that it has applied to a district court (naming and describing the same), for leave to create a bonded indebtedness of the amount prayed for, the maximum rate of interest proposed to be paid thereon, and time of maturity.

(2) On the day set for the hearing of the petition the court shall proceed to hear the same, and any objections that may be filed to the granting hereof. If upon said hearing the court shall find (1) that notice has been given as required by this law and the orders of the court, (2) that the matters and things set forth in said petition are true, (3) that the objects and purposes for which the money is sought are within the legitimate objects and purposes for said corporation, or district, for the carrying on of its business, and that the board of directors have determined that such fund is proper or required for the carrying on of its business, and (4) that the provisions of this law have been complied with, the court shall sign and order filed, entered, and docketed its judgment and decree, including its findings on said hearing, describing the lands and authorizing, ordering, and directing the executive officers of such corporation, or district, to make, execute, and deliver notes, bonds, coupons, or other evidences of indebtedness of the total amount prayed for in the petition, and the maximum interest to be permitted, and make, execute, sign, and deliver mortgage or deed of trust or instrument of hypothecation covering the real property of the corporation, or district, and all of the membership lands in said corporation, or district; said judgment to specify that for the payment of said debt and the interest thereon, as authorized, recourse shall first be had to the real property of said corporation, or district, separate and apart from the membership lands of the individual members thereof, and in the event of the failure of the corporate real property to fully satisfy, pay, and discharge said debt and its interest, as the same may be due, to permit and allow recourse to be had in the form of first lien and right upon all membership lands in said corporation, or district, to the extent authorized by the provisions hereof; provided, if a majority, as provided for in section 14-325, shall file written objection to the granting of the petition, the court shall dismiss the proceeding, and no similar proceeding shall be filed within six months thereafter.

History: En. Sec. 3, Art. 3, Ch. 152, L. 1921; re-en. Sec. 6416, R. C. M. 1921.

14-321. (6417) Execution and record of mortgage—lien. Upon the signing, entering, and docketing of a judgment authorizing the loan, the executive officers of such corporation, or district, shall be authorized and empowered to make, execute, and provide for the sale and delivery of notes, bonds, coupons, or other evidences of indebtedness of said corporation, or district, and make, execute, and deliver mortgages and deeds of trust, or instruments of hypothecation, as required, as security for such debts and the interest thereon. Any such mortgage or deed of trust which may be executed and delivered in accordance herewith shall set forth at length the order and decree of the district court authorizing the same, and when

recorded in the office of the county clerk and recorder of any county in which membership lands included in the membership of such corporation, or district, or any of the assets of said corporation, or district, are situated, said mortgage shall be and become a first lien upon all the lands of said corporation, or district, and upon all of the membership lands of the individual members as may be included in said corporation, or district, situated in such county, as of the date when such lands became members of such corporation, or district, to the extent of the limitation of indebtedness thereon herein provided for.

History: En. Sec. 4, Art. 3, Ch. 152, L. 1921; re-en. Sec. 6417, R. C. M. 1921.

14-322. (6418) Foreclosure of mortgage—procedure—tax levy. In the event there shall be default in either principal or interest or the terms and conditions of any bonds, notes, or mortgages, or deeds of trust, made, executed, and delivered pursuant to the authority hereof, the holder or holders of such mortgage, or the trustee named in the deed of trust, shall be entitled to proceed to foreclose the same in the manner provided for in Title 93 of this code, and the application for foreclosure shall be proceeded with as a foreclosure proceeding. If the court in such foreclosure shall find for the plaintiff and order foreclosure of the mortgage, or deed of trust, as prayed for, such court is hereby empowered in its discretion to include in its judgment and decree of foreclosure an order and direction to the county clerk and recorder of each of the counties in which lands included in said mortgage are situated, ordering and directing the county clerks and recorders of such counties to levy and include as part of the taxes levied against the membership lands included therein, the proportion that such lands shall be liable for such indebtedness and costs so found to be due, which tax thus created shall be collected in whole or in part over a period of not to exceed three years, as the court shall in its order direct.

History: En. Sec. 5, Art. 3, Ch. 152, L. 1921; re-en. Sec. 6418, R. C. M. 1921.

14-323. (6419) Withdrawal of lands—procedure. Any person holding title, or evidence of title, to membership lands included in a corporation, or district, organized under the provisions hereof, subsequently desiring to withdraw his lands from such corporation, or district, may do so upon presenting to the board of directors his verified petition stating that he is the holder of title, or evidence of title, to membership lands included therein, particularly describing the same, with a map or plat thereof; that he is desirous of withdrawing from such corporation, or district, and tendering to said board the pro rata amount of liability of his lands for all of the corporation's lawfully created and existing lien liabilities, together with his pro rata amount of interest due and to become due upon any such liabilities to the maturity of the same. If the matters and things set forth in said petition shall be true, and said petitioner shall deposit with the board his pro rata amount of the liabilities as before herein set out, or furnish a receipt for such amount from the mortgage or lienholders, holding liens against such lands, the proper officers of the corporation, or district, shall make, execute, acknowledge, and deliver a release of said lands from incorporation, or district, and its liabilities. Upon presentation

of such release to the mortgage or lienholder claiming a right against said membership lands, they shall furnish their release thereof, which said release or releases may be filed and recorded in any county or counties in which said lands may be situated. The board of directors and corporate assets of the corporation shall be responsible to any mortgage or lienholder and the withdrawee for the payments of such funds on their debt or liability.

History: En. Sec. 6, Art. 3, Ch. 152, L. 1921; re-en. Sec. 6419, R. C. M. 1921.

14-324. (6420) Withdrawal—application to court for order. In the event the board of directors shall refuse or fail for a period of thirty days to act upon such petition of withdrawal, the petitioner shall be entitled to apply to the district court in the county wherein said lands, or the larger proportion of the same, shall be situated, for an order of withdrawal, and upon his payment to the clerk of the court for the use and benefit of the holders of mortgages or other liens against said corporation or its membership lands, of the pro rata amount of his land's liabilities therefor, he shall be entitled to an order of withdrawal and release of his lands from said court. The filing with the clerk and recorder of a duly certified copy of such order permitting withdrawal, shall operate to release the membership lands described therein from any liens of the corporation under the provisions hereof.

History: En. Sec. 7, Art. 3, Ch. 152, L. 1921; re-en. Sec. 6420, R. C. M. 1921.

14-325. (6421) Organization of districts by existing associations—procedure. Any cooperative, or other corporation, association, society, or group of individuals now or heretofore associated together for purposes and objects similar to those contemplated by the provisions hereof, desiring to come within the provisions hereof, may by resolution of their board of directors, direct written notice to be given to each stockholder or member of their corporation or group of individuals, of the proposal to organize a corporation, or district, under the provisions hereof, and request ten or more of their members, qualified as herein provided for, to prepare and file in such county as they shall select to make their principal place of business, a petition in accordance with the provisions of section 14-302. If thereafter not less than two-thirds of the stockholders, or members, as such, of such cooperative, or other corporation, association, society, or group of individuals, shall either file with the corporation, or district, their written consent to such reorganization, or petition to become members thereof, in accordance with the provisions hereof, or both, the board of directors, or other governing board of such existing co-operative, or other corporation, association, society, or group of individuals, shall be authorized to, through proper officers, transfer to such new corporation, or district, when organized, their corporate assets, real, personal, and mixed. Any stockholder or member of any cooperative or other corporation or society reorganized under the provisions hereof, consenting to such reorganization but not including lands therein, shall be entitled to a certificate or shares of stock or other evidence of membership in such reorganized corporation, or district, of the par value equal to the value of his certificate or shares of stock or membership right in the previous existing co-operative or other corporation

or society's assets at the time of such reorganization, and shall be to this extent a stockholder or member; provided any stockholder or member of the corporation or group of individuals that are reorganizing shall not be considered as increasing the stock of the new corporation, so as to require consent of a majority of its members or stockholders to their admission.

History: En. Sec. 8, Art. 3, Ch. 152, L. 1921; re-en. Sec. 6421, R. C. M. 1921.

14-326. (6422) Dissenting stockholders—appraisal value of equity. In the event any stockholder or member of such existing cooperative, or other corporation, association, society, or group of individuals, shall decline to consent to such transfer, or refuse to become a member of such new organization, he must, within thirty days from and after receiving written notice of the transfer of said assets to the new corporation, or district, serve upon the officers of the newly created corporation, or district, and file in the district court of the county of its principal place of business, his petition, praying for the net value of his equity as a stockholder, or member, in said cooperative, or other corporation, association, society, or group of individuals, in its assets, determined and valued as of the date when the said property was transferred by the directors, or executive officers, to the new corporation, or district. Upon a failure to, within the time and in the manner specified herein, file such claim for appraisal and settlement, it shall be forever barred.

History: En. Sec. 9, Art. 3, Ch. 152, L. 1921; re-en. Sec. 6422, R. C. M. 1921.

14-327. (6423) Errors—effect. Mere error or omission in the description of any lands, or in the names of any of the holders of title, or evidence of title, to lands, shall not operate to render invalid any proceedings hereunder or to deprive the district court of the subject-matter, unless such error or omission shall cause substantial injury.

History: En. Sec. 10, Art. 3, Ch. 152, L. 1921; re-en. Sec. 6423, R. C. M. 1921.

14-328. (6424) Order of court—appeals. Whenever under the provisions hereof any application is permitted to be made to the district court, or appeal allowed thereto, the action of the district court, upon such application, or appeal, shall be final, unless appealed from in accordance with Title 93 of this code within sixty days from and after the date of the entry of the order or judgment.

History: En. Sec. 11, Art. 3, Ch. 152, L. 1921; re-en. Sec. 6424, R. C. M. 1921.

14-329. (6425) Existing corporate laws applicable. Except as otherwise herein specifically provided, corporations, or districts, organized under the provisions hereof shall be governed and controlled by the laws relative to corporations generally.

History: En. Sec. 12, Art. 3, Ch. 152, L. 1921; re-en. Sec. 6425, R. C. M. 1921.

14-330. (6426) Cooperative agricultural associations — ownership of enterprises—powers. Any, either cooperative stock or nonprofit nonstock, agricultural association or company already existing or that may be here-

after organized under the laws of Montana, may own and operate two or more cooperative enterprises in different parts of the state, and may exercise and possess the following powers by so providing in their articles of incorporation or in their by-laws:

(a) That all powers of the association members or stockholders shall be exercised by duly elected delegates at any meeting of such delegates which may be called. They shall elect such officers and transact such business in the same manner as the association members or stockholders are empowered to do. Such officers and board of directors as the delegates may elect shall be known as "general officers" or "general board of directors."

(b) Stockholders or members of such cooperative stock or nonprofit nonstock agricultural associations or companies shall be grouped into "locals" in such districts as the general board of directors may from time to time direct.

(c) Each local, with territorial limits as determined by the general board of directors, shall elect from among its stockholders or members one delegate and one alternate to represent the local at any meeting of the association or company. Such delegate and alternate shall serve for one year. The alternate shall serve as delegate at all meetings where the delegate may not be in attendance.

(d) Each delegate shall have only one vote, regardless of the number of stockholders or members which he may represent.

History: En. Sec. 1, Ch. 93, L. 1921;
re-en. Sec. 6426, R. C. M. 1921.

Responsibility of agricultural society for
tort. 52 ALR 1400.

Collateral References

2 Am. Jur. 448, Agriculture, §§ 54 et seq.

14-331. (6427) Exception. Nothing in this act shall be deemed or construed to limit the powers of the board of directors of any corporation.

History: En. Sec. 2, Ch. 93, L. 1921;
re-en. Sec. 6427, R. C. M. 1921.

CHAPTER 4

COOPERATIVE MARKETING ACT

Section	14-401.	Declaration of policy.
	14-402.	Definitions as used in this act.
	14-403.	Who may organize.
	14-404.	Purposes.
	14-405.	Preliminary investigation.
	14-406.	Powers of associations.
	14-407.	Members.
	14-408.	Articles of incorporation.
	14-409.	Amendments to articles of incorporation.
	14-410.	By-laws.
	14-411.	General and special meetings—how called.
	14-412.	Directors—election—compensation—interest in contracts—vacancies.
	14-413.	Election of officers.
	14-414.	Stock—membership certificates—when issued—voting—liability—limitations on transfer and ownership.
	14-415.	Removal of officer or director.
	14-416.	Referendum.
	14-417.	Marketing contract.

- 14-418. Report to commissioner of agriculture.
- 14-419. Contracts and agreements with other associations.
- 14-420. Association heretofore organized may adopt the provisions of this act.
- 14-421. Constitutionality.
- 14-422. Filing fees.
- 14-423. Recording marketing agreements.
- 14-424. Requisites for filing.
- 14-425. Place for filing.
- 14-426. Recording as notice.
- 14-427. Transfer of title effected on recording, when—lien not to extend to subsequent product.
- 14-428. Agreements as security for loans—transfer and assignment.
- 14-429. Fees of county clerk—indexing of recorded agreements.

14-401. (6428) Declaration of policy. In order to promote, foster, and encourage the intelligent and orderly marketing of agricultural products through cooperation and to eliminate speculation and waste; and to make the distribution of agricultural products as directly as can be efficiently done between producer and consumer; to stabilize the marketing problems of agricultural products, and to supply to its members necessary equipment, this act is passed.

History: En. Sec. 1, Ch. 233, L. 1921;
re-en. Sec. 6428, R. C. M. 1921.

14-402. (6429) Definitions as used in this act. (a) The term “agricultural products” shall include horticultural, viticultural, forestry, dairy, live-stock, poultry, bee and any farm products;

(b) The term “member” shall include actual members of associations without capital stock and holders of common stock in associations organized with capital stock;

(c) The term “association” means any corporation organized under this act; and

(d) The term “person” shall include individuals, firms, partnerships, corporations, and associations.

Associations organized hereunder shall be deemed non-profit, inasmuch as they are not organized to make profits for themselves, as such, or for their members, as such, but only for their members as producers.

This act shall be referred to as the “cooperative marketing act.”

History: En. Sec. 2, Ch. 233, L. 1921;
re-en. Sec. 6429, R. C. M. 1921.

14-403. (6430) Who may organize. Five or more persons engaged in the production of agricultural products may form a nonprofit cooperative association, with or without capital stock, under the provisions of this act.

History: En. Sec. 3, Ch. 233, L. 1921;
re-en. Sec. 6430, R. C. M. 1921.

Collateral References

35 Am. Jur. 153, Markets and Marketing, §§ 39 et seq.

14-404. (6431) Purposes. An association may be organized to engage in any activity in connection with the marketing or selling of the agricultural products of its members, or with the harvesting, preserving, drying, processing, canning, packing, storing, handling, shipping, or utilization thereof, or the manufacturing or marketing of the by-products thereof; or in connection with the manufacturing, selling, or supplying to its members of

machinery, equipment, or supplies; or the financing of the above-enumerated activities; or in any one or more of the activities specified herein.

History: En. Sec. 4, Ch. 233, L. 1921;
re-en. Sec. 6431, R. C. M. 1921.

Constitutionality of statutes relating to grading, packing or branding of farm products. 73 ALR 1445.

Collateral References

Co-operative marketing of farm products by producers' association. 25 ALR 1113.

Constitutionality and construction of farm aid laws. 92 ALR 768.

14-405. (6432) Preliminary investigation. Every group of persons contemplating the organization of an association under this act is urged to communicate with the dean of the state agricultural college who will inform it whatever a survey of the marketing conditions affecting the commodities to be handled by the proposed association indicates regarding probable success.

History: En. Sec. 5, Ch. 233, L. 1921;
re-en. Sec. 6432, R. C. M. 1921.

14-406. (6433) Powers of associations. Each association incorporated under this act shall have the following powers:

(a) To engage in any activity in connection with the marketing, selling, harvesting, preserving, drying, processing, canning, packing, storing, handling, or utilization of any agricultural products produced or delivered to it by its members; or the manufacturing or marketing of the by-products thereof; or in connection with the purchase, hiring or use by its members of supplies, machinery, or equipment; or in the financing of any such activities; or in any one or more of the activities specified in this section. No association shall handle the agricultural products of non-members in greater volume than that of members.

(b) To borrow money and to make advances to members.

(c) To act as the agent or representative of any member or members in any of the above mentioned activities.

(d) To purchase or otherwise acquire, and to hold, own, and exercise all rights of ownership in, and to sell, transfer, or pledge shares of the capital stock or bonds of any corporation or association engaged in any related activity or in the handling or marketing of any of the products handled by the association.

(e) To establish reserves and to invest the funds thereof in bonds or such other property as may be provided in the by-laws.

(f) To buy, hold and exercise all privileges of ownership, over such real or personal property as may be necessary or convenient for the conducting and operation of any of the business of the association or incidental thereto.

(g) To do each and every thing necessary, suitable or proper for the accomplishment of any one of the purposes or the attainment of any one or more of the objects herein enumerated or conducive to or expedient for the interest or benefit of the association; and to contract accordingly; and in addition to exercise and possess all powers, rights and privileges necessary or incidental to the purposes for which the association is organized or to the activities in which it is engaged; and in addition any other rights, powers, and privileges granted by the laws of this state to ordinary

corporations, except such as are inconsistent with the expressed provisions of this act, and to do any such thing anywhere.

History: En. Sec. 6, Ch. 233, L. 1921;
re-en. Sec. 6433, R. C. M. 1921; amd. Sec.
1, Ch. 109, L. 1933.

14-407. (6434) Members. (a) Under the terms and conditions prescribed in its by-laws, an association may admit as members, or issue common stock, only to persons engaged in the production of the agricultural products to be handled by or through the association, including the lessees and tenants of land used for the production of such products and any lessors and landlords who receive as rent part of the crop raised on the leased premises.

(b) If a member of a nonstock association be other than a natural person, such member may be represented by any individual, associate, officer, or member thereof duly authorized in writing.

(c) One association organized hereunder may become a member or stockholder of any other association or associations, organized hereunder.

History: En. Sec. 7, Ch. 233, L. 1921;
re-en. Sec. 6434, R. C. M. 1921.

Collateral References

35 Am. Jur. 156, Markets and Marketing, §§ 44 et seq.

14-408. (6435) Articles of incorporation. Each association formed under this act must prepare and file articles of incorporation, setting forth:

- (a) The name of the association;
- (b) The purposes for which it is formed;
- (c) The place where its principal business will be transacted;
- (d) The term for which it is to exist, not exceeding forty years;
- (e) The number of its directors or trustees, which shall not be less than five nor more than thirteen, and the names and residences of those who are appointed for the first three months and until their successors are elected and qualified.

(f) If organized without capital stock, whether the property rights and interest of each member shall be equal or unequal; and if unequal, the articles shall set forth the general rule or rules applicable to all members by which the property rights and interests, respectively, of each member may and shall be determined and fixed and the association shall have the power to admit new members who shall be entitled to share in the property of the association with the old members, in accordance with such general rule or rules. This provision of the articles of incorporation shall not be altered, amended, or repealed except by the written consent or vote of three-fourths of the members.

(g) The articles must be subscribed by the incorporators and acknowledged by one of them before an officer authorized by the law of this state to take and certify acknowledgments of deeds and conveyances; and shall be filed in accordance with the provisions of the general corporation law of this state, and when so filed the said articles of incorporation, or certified copies thereof, shall be received in all the courts of this state, and other places, as prima facie evidence of the facts contained therein, and of the due incorporation of such association. A certified copy of the

articles of incorporation shall also be filed with the dean of the state college of agriculture.

History: En. Sec. 8, Ch. 233, L. 1921;
re-en. Sec. 6435, R. C. M. 1921.

14-409. (6436) Amendments to articles of incorporation. The articles of incorporation may be altered or amended at any regular meeting or at any special meeting called for that purpose. An amendment must first be approved by two-thirds of the directors and then adopted by a vote representing a majority of all the members of the association. Amendments to the articles of incorporation when so adopted shall be filed in accordance with the provisions of the general corporation law of this state.

History: En. Sec. 9, Ch. 233, L. 1921;
re-en. Sec. 6436, R. C. M. 1921.

14-410. (6437) By-laws. Each association incorporated under this act must, within thirty days after its incorporation, adopt for its government and management a code of by-laws, not inconsistent with the powers granted by this act. A majority vote of the members or stockholders, or their written assent, is necessary to adopt such by-laws. Each association under its by-laws may also provide for any or all of the following matters:

- (a) The time, place and manner of calling and conducting its meetings.
- (b) The number of stockholders or members constituting a quorum.
- (c) The right of members or stockholders to vote by proxy or by mail or by both, and the conditions, manner, form, and effects of such votes.
- (d) The number of directors constituting a quorum.
- (e) The qualifications, compensation and duties and term of office of directors and officers; time of their election and the mode and manner of giving notice thereof.
- (f) Penalties for violations of the by-laws.
- (g) The amount of entrance, organization and membership fees, if any; the manner and method of collection of the same, and the purposes for which they may be used.
- (h) The amount which each member or stockholder shall be required to pay annually or from time to time, if at all, to carry on the business of the association, the charge, if any, to be paid by each member or stockholder for services rendered by the association to him and the time of payment and the manner of collection; and the marketing contract between the association and its members or stockholders which every member or stockholder may be required to sign.
- (i) The number and qualifications of members or stockholders of the association and the conditions precedent to membership or ownership of common stock; the method, time, and manner of permitting members to withdraw or the holders of common stock to transfer their stock; the manner of assignment and transfer of the interest of members, and the shares of common stock; the conditions upon which, and the time when membership of any member shall cease. The automatic suspension of the rights of a member when he ceases to be eligible to membership in the association, and mode, manner, and effect of the expulsion of a member; manner of determining the value of a member's interest and provision for its purchase by the association upon the death or withdrawal of a

member or stockholder or upon the expulsion of a member or forfeiture of his membership, or at the option of the association, by conclusive appraisal by the board of directors. In case of the withdrawal or expulsion of a member the board of directors shall equitably and conclusively appraise his property interests in the association and shall fix the amount thereof in money, which shall be paid to him within one year after such expulsion or withdrawal.

History: En. Sec. 10, Ch. 233, L. 1921;
re-en. Sec. 6437, R. C. M. 1921.

14-411. (6438) General and special meetings—how called. In its by-laws each association shall provide for one or more regular meetings annually. The board of directors shall have the right to call a special meeting at any time and ten per cent of the members or stockholders may file a petition stating the specific business to be brought before the association and demand a special meeting at any time. Such meeting must thereupon be called by the directors. Notice of all meetings, together with a statement of the purposes thereof, shall be mailed to each member at least ten days prior to the meeting; provided, however, that the by-laws may require instead that such notice may be given by publication in a newspaper of general circulation, published at the principal place of business of the association.

History: En. Sec. 11, Ch. 233, L. 1921;
re-en. Sec. 6438, R. C. M. 1921.

14-412. (6439) Directors — election — compensation — interest in contracts—vacancies. The affairs of the association shall be managed by a board of not less than five directors, elected by the members or stockholders from their own number. The by-laws may provide that the territory in which the association has members shall be divided into districts and that the directors shall be elected according to such districts. In such a case the by-laws shall specify the number of directors to be elected by each district, the manner and method of reapportioning the directors and of redistricting the territory covered by the association. The by-laws may provide that primary elections should be held in each district to elect the directors apportioned to such districts and the result of all such primary elections must be ratified by the next regular meeting of the association.

An association may provide a fair remuneration for the time actually spent by its officers and directors in its service. No director, during the term of his office, shall be a party to a contract for profit with the association differing in any way from the business relations accorded regular members or holders of common stock of the association, or to any other kind of contract differing from terms generally current in that district.

When a vacancy on the board of directors occurs, other than by expiration of term, the remaining members of the board, by a majority vote, shall fill the vacancy, unless the by-laws provided for an election of directors by district. In such a case the board of directors shall immediately call a special meeting of the members or stockholders in that district to fill the vacancy.

History: En. Sec. 12, Ch. 233, L. 1921;
re-en. Sec. 6439, R. C. M. 1921.

14-413. (6440) Election of officers. The directors shall elect from their number a president and one or more vice-presidents. They shall also elect a secretary and treasurer, who need not be directors, and they may combine the two latter offices and designate the combined office as secretary-treasurer. The treasurer may be a bank or any depository, and as such shall not be considered as an officer, but as a function of the board of directors. In such case the secretary shall perform the usual accounting duties of the treasurer, excepting that the funds shall be deposited only as authorized by the board of directors.

History: En. Sec. 13, Ch. 233, L. 1921;
re-en. Sec. 6440, R. C. M. 1921.

14-414. (6441) Stock—membership certificates—when issued—voting—liability—limitations on transfer and ownership. When a member of an association established without capital stock, has paid his membership fee in full, he shall receive a certificate of membership.

No association shall issue stock to a member until it has been fully paid for. The promissory notes of the members may be accepted by the association as full or partial payment. The association shall hold the stock as security for the payment of the note, but such retention as security shall not affect the members' right to vote.

Except for debts lawfully contracted between him and the association, no member shall be liable for the debts of the association to an amount exceeding the sum remaining unpaid on his membership fee or his subscription to the capital stock, including any unpaid balance on any promissory notes given in payment thereof.

No stockholder of a cooperative association shall own more than one-twentieth of the issued common stock of the association; and an association, in its by-laws, may limit the amount of common stock which one member may own to any amount less than one-twentieth of the issued common stock.

No member or stockholder shall be entitled to more than one vote.

The by-laws shall prohibit the transfer of the common stock of the association to persons not engaged in the production of the agricultural products handled by the association, and such restrictions must be printed upon every certificate of stock subject thereto.

The association may at any time, except when the debt of the association exceeds fifty per cent of the assets thereof, buy in or purchase its common stock at book value thereof as conclusively determined by the board of directors and pay for it in cash within one year thereafter.

History: En. Sec. 14, Ch. 233, L. 1921;
re-en. Sec. 6441, R. C. M. 1921.

14-415. (6442) Removal of officer or director. Any member may bring charges against an officer or director by filing them in writing with the secretary of the association, together with a petition signed by ten per cent of the members, requesting the removal of the officer or director in question. The removal shall be voted upon at the next regular or special meeting of the association and, by a vote of a majority of the members, the association may remove the officer or director and fill the vacancy. The director or officer against whom such charges have been brought shall be in-

formed in writing of the charges previous to the meeting and shall have an opportunity at the meeting to be heard in person or by counsel and to present witnesses; and the person or persons bringing the charges against him shall have the same opportunity.

In case the by-laws provide for election of directors by districts with primary elections in each district, then the petition for removal of a director must be signed by twelve per cent of the members residing in the district from which he was elected. The board of directors must call a special meeting of the members residing in that district to consider the removal of the director. By a vote of the majority of the members of that district, the director in question shall be removed from office.

History: En. Sec. 15, Ch. 233, L. 1921;
re-en. Sec. 6442, R. C. M. 1921.

14-416. (6443) Referendum. Upon demand of forty per cent of the entire board of directors any matter that has been approved or passed by the board must be referred to the entire membership or the stockholders for decision at the next special or regular meeting; provided, however, that a special meeting may be called for the purpose.

History: En. Sec. 16, Ch. 233, L. 1921;
re-en. Sec. 6443, R. C. M. 1921.

14-417. (6444) Marketing contract. The association and its members may make and execute marketing contracts, requiring the members to sell, for any period of time, not over ten years, all or any specified part of their agricultural products or specified commodities exclusively to or through the association or any facilities to be created by the association. The contract may provide that the association may sell or resell the products of its members with or without taking title thereto; and pay over to its members the resale price, after deducting all necessary selling, overhead and other costs and expenses.

The by-laws and the marketing contract may fix, as liquidated damages, specific sums to be paid by the member or stockholder to the association upon the breach by him of any provisions of the marketing contract regarding the sale or delivery or withholding of products and may further provide that the member will pay all costs, premiums for bonds, expenses and fees in case any action is brought upon the contract by the association, and any such provisions shall be valid and enforceable in the courts of this state.

In the event of any such breach or threatened breach of such marketing contract by a member, the association shall be entitled to an injunction to prevent the further breach of the contract, and to a decree of specific performance thereof. Pending the adjudication of such an action and upon filing a verified complaint showing the breach or threatened breach, and upon filing a sufficient bond, the association shall be entitled to a temporary restraining order and preliminary injunction against the member.

History: En. Sec. 17, Ch. 233, L. 1921;
re-en. Sec. 6444, R. C. M. 1921.

Collateral References

35 Am. Jur., Markets and Marketing,
p. 152, §§ 37 et seq., p. 159, §§ 50 et seq.

14-418. (6445) Report to commissioner of agriculture. Each association formed under this act shall make an annual report to the commissioner

of agriculture on forms furnished by him, setting forth the name of such association, its principal place of business; a statement of its business operations during the period covered by such report, showing the amount of capital stock paid up and the number of stockholders of a stock association or the number of members and amount of membership fees received if a nonstock association; the total expenses of operations; the volume of business transacted; the amount of its indebtedness or liability; and its balance sheets.

History: En. Sec. 18, Ch. 233, L. 1921;
re-en. Sec. 6445, R. C. M. 1921; amd. Sec.
1, Ch. 144, L. 1923.

14-419. (6446) Contracts and agreements with other associations. Any association may, upon resolution adopted by its board of directors, enter into all necessary and proper stipulations, agreements, and contracts and arrangements with any other co-operative corporation, association or associations, formed in this or in any other state, for the co-operative and more economical carrying on of its business, or any part or parts thereof. Any two or more associations may, by agreement between them, unite in employing and using or may separately employ and use the same methods, means, and agencies for carrying on and conducting their respective businesses.

History: En. Sec. 19, Ch. 233, L. 1921;
re-en. Sec. 6446, R. C. M. 1921.

14-420. (6447) Association heretofore organized may adopt the provisions of this act. Any corporation or association organized under previously existing statutes, may by a majority vote of its stockholders or members be brought under the provisions of this act by limiting its membership and adopting the other restrictions as provided herein. It shall make out in duplicate a statement signed and sworn to by its directors, upon forms supplied by the corporation commissioners, to the effect that the corporation or association has by a majority vote of its stockholders or members decided to accept the benefits and be bound by provisions of this act. Articles of incorporation shall be filed as required in section 14-408, except that they shall be signed by the members of the board of directors. The filing fee shall be the same as for filing an amendment to articles of incorporation.

History: En. Sec. 20, Ch. 233, L. 1921;
re-en. Sec. 6447, R. C. M. 1921.

14-421. (6448) Constitutionality. If any section of this act shall be declared unconstitutional for any reason, the remainder of the act shall not be affected thereby.

History: En. Sec. 21, Ch. 233, L. 1921;
re-en. Sec. 6448, R. C. M. 1921.

14-422. (6449) Filing fees. For filing articles of incorporation an association organized hereunder shall pay to the secretary of state, five dollars; and for filing an amendment to the articles, two and 50/100 dollars.

History: En. Sec. 22, Ch. 233, L. 1921;
re-en. Sec. 6449, R. C. M. 1921.

14-423. (6449.1) Recording marketing agreements. Any co-operative marketing association organized under the laws of this state, or doing busi-

ness in this state pursuant to the laws of this state, may file for record its marketing agreements covering livestock, increase, wool, and other livestock products as hereinafter provided.

History: En. Sec. 1, Ch. 34, L. 1927.

14-424. (6449.2) Requisites for filing. Such agreements shall be eligible for filing for record without being acknowledged before a notary public or other officer, or without any affidavit of good faith or other formality, but shall be signed by the member of the association, and in the name of the association, by a duly authorized officer of the association, and the corporate seal of the association shall be affixed.

History: En. Sec. 2, Ch. 34, L. 1927.

14-425. (6449.3) Place for filing. Such agreements shall be filed in the office of the county clerk and recorder in the county where such livestock or livestock product is located on the date such agreement is so filed for record.

History: En. Sec. 3, Ch. 34, L. 1927.

14-426. (6449.4) Recording as notice. Such recordation shall operate as constructive notice of the agreement and of the rights of the association and of its successors and assigns, as specified in the agreement and in this act.

History: En. Sec. 4, Ch. 34, L. 1927.

14-427. (6449.5) Transfer of title effected on recording, when—lien not to extend to subsequent product. In case such marketing agreement specifies that the member has agreed to sell, and the association has agreed to buy, the product specified in the agreement, produced by or for such member during a period of time in said agreement designated; and such agreement further provides that the association shall have the absolute title to such product, and the right to enforce specific performance of the agreement, and the power to borrow money thereon for any purpose of the association, and that the association shall have all rights of ownership of such product without limitation, including the right to sell or pledge for its own account, or as security for its own debts or otherwise, then such agreement, when so filed for record, shall operate to convey and transfer to such association full title to and possession of such product covered thereby, and any possession by the member thereafter shall be only as custodian for such association. It is further provided that such agreement shall not apply or constitute any lien or encumbrance on any product derived subsequent to the term therein specified, and no release or satisfaction of such an agreement need be filed for record.

History: En. Sec. 5, Ch. 34, L. 1927.

14-428. (6449.6) Agreements as security for loans—transfer and assignment. It is further provided that such association shall have full power to transfer and assign all of its rights under such cooperative marketing agreement, containing the provisions specified in the preceding section hereof, as security for loans obtained by it. Such transfer and assignment may be by endorsement on the marketing agreement so filed for record, or may be made by separate document which shall adequately describe the said

marketing agreement, or the various agreements, covered thereby. Any such assignment shall be eligible for record in the same manner as is herein provided for recording of cooperative agreements. Such assignments need not be acknowledged before a notary public or other officer, nor contain any affidavit of good faith or other formality, but shall be signed in the name of the association by a duly authorized officer of the association and the corporate seal of the association shall be affixed. The assignee under any such assignment shall be subrogated to all the rights of the association under said cooperative marketing agreements, and the provisions of this act.

History: En. Sec. 6, Ch. 34, L. 1927.

14-429. (6449.7) Fees of county clerk—indexing of recorded agreements. The fees payable to the county clerk and recorder shall be as follows: fifty cents for each agreement so filed for record; fifty cents for each certificate of prior liens and mortgages; fifty cents for certifying to copy of marketing agreements so filed for record; fifty cents for each assignment which is filed separate from the marketing agreement or agreements covered thereby. The county clerk and recorder shall index such agreements and assignments in the index of chattel mortgages.

History: En. Sec. 7, Ch. 34, L. 1927.

CHAPTER 5

RURAL ELECTRIC COOPERATIVE ACT

Section	14-501.	Act, how cited.
	14-502.	Purpose.
	14-503.	Powers.
	14-504.	Name.
	14-505.	Incorporators.
	14-506.	Articles of incorporation.
	14-507.	By-laws.
	14-508.	Members.
	14-509.	Board of trustees.
	14-510.	Voting districts.
	14-511.	Officers.
	14-512.	Amendment of articles of incorporation.
	14-513.	Consolidation.
	14-514.	Merger.
	14-515.	Effect of consolidation or merger.
	14-516.	Conversion of existing corporations.
	14-517.	Initiative by members.
	14-518.	Dissolution.
	14-519.	Filing of articles.
	14-520.	Refunds to members.
	14-521.	Disposition of property.
	14-522.	Nonliability of members for debts of cooperative.
	14-523.	Recordation of mortgages.
	14-524.	Waiver of notice.
	14-525.	Trustees, officers or members—notaries.
	14-526.	Foreign corporations.
	14-527.	Fees.
	14-528.	Exemption from excise taxes—license fee.
	14-529.	Exemption from jurisdiction of the public service commission.
	14-530.	Definitions.
	14-531.	Construction of act.

14-501. Act, how cited. This act may be cited as the “rural electric cooperative act.”

History: En. Sec. 1, Ch. 172, L. 1939.

Cross-Reference

Construction of electric lines, regulations, secs. 24-101 to 24-144.

Construction

Nothing in this act indicates that the legislature intended that cooperatives should have the exclusive right to furnish

electric energy in such rural areas, and thus prevent competition by other authorized electric public utilities. *Sheridan County Electric Co-op. v. Montana-Dakota Utilities Co.*, ___ M ___, 270 P 2d 742, 744.

References

Cited in *Sheridan Elec. Coop. v. Ferguson*, 124 M 543, 227 P 2d 597, 599.

14-502. Purpose. Cooperative, nonprofit, membership corporations may be organized under this act for the purpose of supplying electric energy and promoting and extending the use thereof in rural areas, in which electrical current and service is not otherwise available, from existing facilities and plants. Corporations organized under this act and corporations which become subject to this act in the manner hereinafter provided are hereinafter referred to as "cooperative."

History: En. Sec. 2, Ch. 172, L. 1939.

Collateral References

Electricity \Rightarrow 3.
29 C.J.S. Electricity § 10.

14-503. Powers. A cooperative shall have power:

- (a) To sue and be sued, in its corporate name;
- (b) To have perpetual existence;
- (c) To adopt a corporate seal and alter the same at pleasure;
- (d) To generate, manufacture, purchase, acquire, accumulate and transmit electric energy, and to distribute, sell, supply and dispose of electric energy in rural areas to its members, to governmental agencies and political subdivisions, and to other persons not in excess of ten per centum (10%) of the number of its members;

(e) To make loans to persons to whom electric energy is or will be supplied by the cooperative for the purpose of, and otherwise to assist such persons in, wiring their premises and installing therein electrical and plumbing fixtures, appliances, apparatus and equipment of any and all kinds and character, and in connection therewith, to purchase, acquire, lease, sell, distribute, install and repair such electrical and plumbing fixtures, appliances, apparatus and equipment, and to accept, or otherwise acquire, and to sell, assign, transfer, endorse, pledge, hypothecate and otherwise dispose of notes, bonds and other evidences of indebtedness and any and all types of security therefor;

(f) To make loans to persons to whom electric energy is or will be supplied by the cooperative for the purpose of, and otherwise to assist such persons in, constructing, maintaining and operating electric refrigeration plants;

(g) To become a member in one or more other cooperatives or corporations or to own stock therein;

(h) To construct, purchase, take, receive, lease as lessee, or otherwise acquire, and to own, hold, use, equip, maintain, and operate, and to sell, assign, transfer, convey, exchange, lease as lessor, mortgage, pledge, or otherwise dispose of or encumber, electric transmission and distribution lines or systems, electric generating plants, electric refrigeration plants, lands, buildings, structures, dams, plants and equipment, and any and all kinds or classes of real or personal property whatsoever, which shall be

deemed necessary, convenient or appropriate to accomplish the purpose for which the cooperative is organized;

(i) To purchase or otherwise acquire, and to own, hold, use and exercise and to sell, assign, transfer, convey, mortgage, pledge, hypothecate, or otherwise dispose of or encumber, franchises, rights, privileges, licenses, rights of way and easements;

(j) To borrow money and otherwise contract indebtedness, and to issue notes, bonds and other evidences of indebtedness therefor, and to secure the payment thereof by mortgage, pledge, deed of trust, or any other encumbrance upon any or all of its then owned or after-acquired real or personal property, assets, franchises, revenues or income;

(k) To construct, maintain and operate electric transmission and distribution lines along, upon, under and across all public thoroughfares, including without limitation all roads, highways, streets, alleys, bridges and causeways, and upon, under and across all publicly-owned lands, subject, however, to the same requirements in respect of the use of such thoroughfares and lands as are imposed by the respective authorities having jurisdiction thereof upon corporations constructing or operating electric transmission and distribution lines or systems;

(l) To exercise the power of eminent domain in the manner provided by the laws of this state for the exercise of that power by corporations constructing or operating electric transmission and distribution lines or systems;

(m) To conduct its business and exercise any or all of its powers within or without this state;

(n) To adopt, amend and repeal by-laws; and

(o) To do and perform any and all other acts and things, and to have and exercise any and all other powers which may be necessary, convenient or appropriate to accomplish the purpose for which the cooperative is organized.

History: En. Sec. 3, Ch. 172, L. 1939.

Construction

This section indicates the intention to limit the rights of the cooperatives in such rural areas to certain users. Such cooperatives do not have an implied exclusive franchise right whereby other public utilities would be prevented from competing therein. *Sheridan County Electric Co-op. v. Montana-Dakota Utilities Co.*, — M —, 270 P 2d 742, 744.

Collateral References

Electricity — 4.

29 C.J.S. Electricity §§ 14, 15.

13 Am. Jur. 770, Corporations, §§ 739 et seq.

Right of public utility not having an exclusive franchise to protection against, or damages for, interference with its operations, property, or plant by a competitor. 119 ALR 432.

14-504. Name. The name of each cooperative shall include the words "electric" and "cooperative," and the abbreviation "Inc.," provided, however, such limitations shall not apply if, in an affidavit made by the president or vice-president of a cooperative and filed with the secretary of state, it shall appear that the cooperative desires to transact business in another state and is precluded therefrom by reason of its name. The name of a cooperative shall distinguish it from the name of any other corporation organized under the laws of, or authorized to transact business in, this state. The words "electric" and "cooperative" shall not both be used in the name of any corporation organized under the laws of, or authorized to transact business

in, this state, except a cooperative or a corporation transacting business in this state pursuant to the provisions of this act.

History: En. Sec. 4, Ch. 172, L. 1939.

Collateral References

Electricity \hookrightarrow 3.

29 C.J.S. Electricity § 10.

14-505. Incorporators. Five or more natural persons, or two or more cooperatives, may organize a cooperative in the manner hereinafter provided.

History: En. Sec. 5, Ch. 172, L. 1939.

14-506. Articles of incorporation. (a) The articles of incorporation of a cooperative shall recite in the caption that they are executed pursuant to this act, shall be signed and acknowledged by each of the incorporators, and shall state:

- (1) The name of the cooperative;
- (2) The address of its principle office;
- (3) The names and addresses of the incorporators;
- (4) The names and addresses of the persons who shall constitute its first board of trustees; and
- (5) Any provisions not inconsistent with this act deemed necessary or advisable for the conduct of its business and affairs.

(b) Such articles of incorporation shall be submitted to the secretary of state for filing as provided in this act.

(c) It shall not be necessary to set forth in the articles of incorporation of a cooperative the purpose for which it is organized or any of the corporate powers vested in a cooperative under this act.

History: En. Sec. 6, Ch. 172, L. 1939.

Collateral References

See generally, 13 Am. Jur. 117, Corporations.

14-507. By-laws. The original by-laws of a cooperative shall be adopted by its board of trustees. Thereafter by-laws shall be adopted, amended or repealed by its members. The by-laws shall set forth the rights and duties of members and trustees and may contain other provisions for the regulation and management of the affairs of the cooperative not inconsistent with this act or with the articles of incorporation.

History: En. Sec. 7, Ch. 172, L. 1939.

14-508. Members. (a) No person who is not an incorporator shall become a member of a cooperative unless such person shall agree to use electric energy furnished by the cooperative when such electric energy shall be available through its facilities. The by-laws may provide that any person, including an incorporator, shall cease to be a member of a cooperative if he shall fail or refuse to use electric energy made available by the cooperative or if electric energy shall not be made available to such person by the cooperative within a specified time after such person shall have become a member thereof. Membership in the cooperative shall not be transferable, except as provided in the by-laws. The by-laws may prescribe additional qualifications and limitations in respect of membership.

(b) An annual meeting of the members shall be held at such time as shall be provided in the by-laws.

(c) Special meetings of the members may be called by the board of trustees, by any three trustees, by not less than ten per centum (10%) of the members, or by the president.

(d) Meetings of members shall be held at such place as may be provided in the by-laws. In the absence of any such provision, all meetings shall be held in the city or town in which the principal office of the cooperative is located.

(e) Except as hereinafter otherwise provided, written or printed notice stating the time and place of each meeting of members and, in the case of a special meeting, the purpose or purposes for which the meeting is called, shall be given to each member, either personally or by mail, not less than ten (10) nor more than twenty-five (25) days before the date of the meeting.

(f) Five per centum (5%) of all members present in person shall constitute a quorum for the transaction of business at all meetings of the members, but the by-laws may prescribe the presence of a greater percentage of the members for a quorum. If less than a quorum is present at any meeting, a majority of those present in person may adjourn the meeting from time to time without further notice.

(g) Each member shall be entitled to one vote on each matter submitted to a vote at a meeting. Voting shall be in person, but, if the by-laws so provide, may also be by proxy or by mail, or both. If the by-laws provide for voting by proxy or by mail, they shall also prescribe the conditions under which proxy or mail voting or both shall be exercised. In any event, no person shall vote as proxy for more than three (3) members at any meeting of the members.

History: En. Sec. 8, Ch. 172, L. 1939.

Collateral References

Electricity $\text{C}\rightarrow$ 2-4.

29 C.J.S. Electricity §§ 10, 15.

14-509. Board of trustees. (a) The business and affairs of a cooperative shall be managed by a board of not less than five (5) trustees, each of whom shall be a member of the cooperative or of another cooperative which shall be a member thereof. The by-laws shall prescribe the number of trustees, their qualifications, other than those provided for in this act, the manner of holding meetings of the board of trustees and of the election of successors to trustees who shall resign, die or otherwise be incapable of acting. The by-laws may also provide for the removal of trustees from office and for the election of their successors. Without approval of the membership, trustees shall not receive any salaries for their services as trustees and, except in emergencies, shall not be employed by the cooperative in any capacity involving compensation. The by-laws may, however, provide that a fixed fee and expenses of attendance, if any, may be allowed for attendance at each meeting of the board of trustees.

(b) The trustees of a cooperative named in any articles of incorporation, consolidation, merger or conversion, as the case may be, shall hold office until the next following annual meeting of the members or until their successors shall have been elected and qualified. At each annual meeting or, in case of failure to hold the annual meeting as specified in the by-laws, at a special meeting called for that purpose, the members shall elect trustees to

hold office until the next following annual meeting of the members, except as hereinafter otherwise provided. Each trustee shall hold office for the term for which he is elected or until his successor shall have been elected and qualified.

(c) The by-laws may provide that, in lieu of electing the whole number of trustees annually, the trustees shall be divided into two classes at the first or any subsequent annual meeting, each class to be as nearly equal in number as possible, with the term of office of the trustees of the first class to expire at the next succeeding annual meeting and the term of the second class to expire at the second succeeding annual meeting. At each annual meeting after such classification the number of trustees equal to the number of the class whose term expires at the time of such meeting shall be elected to hold office until the second succeeding annual meeting.

(d) A majority of the board of trustees shall constitute a quorum.

(e) If a husband and wife hold joint membership in a cooperative, either one, but not both, may be elected a trustee.

(f) The board of trustees may exercise all of the powers of a cooperative except such as are conferred upon the members by this act, or its articles of incorporation or by-laws.

History: En. Sec. 9, Ch. 172, L. 1939.

14-510. Voting districts. Notwithstanding any other provision of this act, the by-laws may provide that the territory in which a cooperative supplies electric energy to its members shall be divided into two or more voting districts and that in respect of each such voting district (1) a designated number of trustees shall be elected by the members residing therein, or (2) a designated number of delegates shall be elected by the members residing therein, or (3) both such trustees and delegates shall be elected by such members. In any such case the by-laws shall prescribe the manner in which such voting districts and the members thereof, and the delegates and trustees, if any, elected therefrom shall function and the powers of the delegates, which may include the power to elect trustees. No member at any voting district meeting and no delegate at any meeting shall vote by proxy or by mail.

History: En. Sec. 10, Ch. 172, L. 1939.

14-511. Officers. The officers of a cooperative shall consist of a president, vice-president, secretary and treasurer, who shall be elected annually by and from the board of trustees. No person shall continue to hold any of the above offices after he shall have ceased to be a trustee. The offices of secretary and of treasurer may be held by the same person. The board of trustees may also elect or appoint such other officers, agents, or employees as it shall deem necessary or advisable and shall prescribe the powers and duties thereof. Any officer may be removed from office and his successor elected in the manner prescribed in the by-laws.

History: En. Sec. 11, Ch. 172, L. 1939.

14-512. Amendment of articles of incorporation. (a) A cooperative may amend its articles of incorporation by complying with the following requirements:

(1) The proposed amendment shall be first approved by the board of trustees and shall then be submitted to a vote of the members at any annual or special meeting thereof, the notice of which shall set forth the proposed amendment. The proposed amendment, with such changes as the members shall choose to make therein, shall be deemed to be approved on the affirmative vote of not less than two-thirds of those members voting thereon at such meeting; and

(2) Upon such approval by the members, articles of amendment shall be executed and acknowledged on behalf of the cooperative by its president or vice-president and its corporate seal shall be affixed thereto and attested by its secretary. The articles of amendment shall recite in the caption that they are executed pursuant to this act and shall state;

(a) The name of the cooperative;

(b) The address of its principal office;

(c) The date of the filing of its articles of incorporation in the office of the secretary of state; and

(d) The amendment to its articles of incorporation. The president or vice-president executing such articles of amendment shall also make and annex thereto an affidavit stating that the provisions of this section were duly complied with. Such articles of amendment and affidavit shall be submitted to the secretary of state for filing as provided in this act.

(b) A cooperative may, without amending its articles of incorporation, upon authorization of its board of trustees, change the location of its principal office by filing a certificate of change of principal office executed and acknowledged by its president or vice-president under its seal attested by its secretary, in the office of the secretary of state and also in each county office in which its articles of incorporation or any prior certificate of change of principal office of such cooperative has been filed and paying the fees prescribed in this act in connection therewith. Such cooperative shall also, within thirty (30) days after the filing of such certificate of change of principal office in any county office, file therein certified copies of its articles of incorporation and all amendments thereto, if not already on file therein.

History: En. Sec. 12, Ch. 172, L. 1939.

Collateral References

See 13 Am. Jur. 229, Corporations, §§ 86 et seq.

14-513. Consolidation. Any two or more cooperatives, each of which is hereinafter designated a "consolidating cooperative," may consolidate into a new cooperative, hereinafter designated the "new cooperative," by complying with the following requirements:

(a) The proposition for the consolidation of the consolidating cooperatives into the new cooperative and proposed articles of consolidation to give effect thereto shall be first approved by the board of trustees of each consolidating cooperative. The proposed articles of consolidation shall recite in the caption that they are executed pursuant to this act and shall state: (1) the name of each consolidating cooperative, the address of its principal office, and the date of the filing of its articles of incorporation in the office of the secretary of state; (2) the name of the new cooperative and the address of its principal office; (3) the names and addresses of the persons who shall constitute the first board of trustees of the new cooperative; (4)

the terms and conditions of the consolidation and the mode of carrying the same into effect, including the manner and basis of converting memberships in each consolidating cooperative into memberships in the new cooperative and the issuance of certificates of memberships in respect of such converted memberships; and (5) any provisions not inconsistent with this act deemed necessary or advisable for the conduct of the business and affairs of the new cooperative;

(b) The proposition for the consolidation of the consolidating cooperatives into the new cooperative and the proposed articles of consolidation approved by the board of trustees of each consolidating cooperative shall then be submitted to a vote of the members thereof at any annual or special meeting thereof, the notice of which shall set forth full particulars concerning the proposed consolidation. The proposed consolidation and the proposed articles of consolidation shall be deemed to be approved upon the affirmative vote of not less than two-thirds of those members of each consolidating cooperative voting thereon at such meeting; and

(c) Upon such approval by the members of the respective consolidating cooperatives, articles of consolidation in the form approved shall be executed and acknowledged on behalf of each consolidating cooperative by its president or vice-president and its seal shall be affixed thereto and attested by its secretary. The president or vice-president of each consolidating cooperative executing such articles of consolidation, shall also make and annex thereto an affidavit stating that the provisions of this section were duly complied with by such cooperative. Such articles of consolidation and affidavits shall be submitted to the secretary of state for filing as provided in this act.

History: En. Sec. 13, Ch. 172, L. 1939.

Collateral References

13 Am. Jur. 1088, Corporations, § 1178 et seq.

14-514. Merger. Any one or more cooperatives, each of which is hereinafter designated a "merging cooperative," may merge into another cooperative, hereinafter designated the "surviving cooperative," by complying with the following requirements:

(a) The proposition for the merger of the merging cooperatives into the surviving cooperative and proposed articles of merger to give effect thereto shall be first approved by the board of trustees of each merging cooperative and by the board of trustees of the surviving cooperative. The proposed articles of merger shall recite in the caption that they are executed pursuant to this act and shall state: (1) the name of each merging cooperative, the address of its principal office, and the date of the filing of its articles of incorporation in the office of the secretary of state; (2) the name of the surviving cooperative and the address of its principal office; (3) a statement that the merging cooperatives elect to be merged into the surviving cooperative; (4) the terms and conditions of the merger and the mode of carrying the same into effect, including the manner and basis of converting the memberships in the merging cooperative or cooperatives into memberships in the surviving cooperative and the issuance of certificates of membership in respect of such converted memberships; and (5) any provisions not inconsistent with this act deemed necessary or advisable

for the conduct of the business and affairs of the surviving cooperative;

(b) The proposition for the merger of the merging cooperatives into the surviving cooperative and the proposed articles of merger approved by the board of trustees of the respective cooperatives which are parties to such proposed merger shall then be submitted to a vote of the members of each such cooperative at any annual or special meeting thereof, the notice of which shall set forth full particulars concerning the proposed merger. The proposed merger and the proposed articles of merger shall be deemed to be approved upon the affirmative vote of not less than two-thirds of those members of each cooperative voting thereon at such meeting; and

(c) Upon such approval by the members of the respective cooperatives, parties to the proposed merger, articles of merger, in the form approved shall be executed and acknowledged on behalf of each such cooperative by its president or vice-president and its seal shall be affixed thereto and attested by its secretary. The president or vice-president of each cooperative executing such articles of merger shall also make and annex thereto an affidavit stating that the provisions of this section were duly complied with by such cooperative. Such articles of merger and affidavits shall be submitted to the secretary of state for filing as provided in this act.

History: En. Sec. 14, Ch. 172, L. 1939.

14-515. Effect of consolidation or merger. The effect of consolidation or merger shall be as follows:

(a) The several cooperatives, parties to the consolidation or merger, shall be a single cooperative, which, in the case of a consolidation, shall be the new cooperative provided for in the articles of consolidation, and, in the case of a merger, shall be that cooperative designated in the articles of merger as the surviving cooperative, and the separate existence of all cooperatives, parties to the consolidation or merger, except the new or surviving cooperative, shall cease;

(b) Such new or surviving cooperative shall have all the rights, privileges, immunities and powers and shall be subject to all the duties and liabilities of a cooperative organized under the provisions of this act, and shall possess all the rights, privileges, immunities and franchises, as well of a public as of a private nature, and all property, real and personal, applications for membership, all debts due on whatever account, and all other choses in action, of each of the consolidating or merging cooperatives, and furthermore all and every interest of, or belonging or due, to each of the cooperatives so consolidated or merged, shall be taken and deemed to be transferred to and vested in such new or surviving cooperative without further act or deed; and the title to any real estate, or any interest therein, under the laws of this state vested in any such cooperative shall not revert or be in any way impaired by reason of such consolidation or merger;

(c) Such new or surviving cooperative shall thenceforth be responsible and liable for all of the liabilities and obligations of each of the cooperatives so consolidated or merged, and any claim existing, or action or proceeding pending, by or against any of such cooperatives may be prosecuted as if such consolidation or merger had not taken place, but such new or surviving cooperative may be substituted in its place;

(d) Neither the rights of creditors nor any liens upon the property of any of such cooperatives shall be impaired by such consolidation or merger; and

(e) In the case of a consolidation, the articles of consolidation shall be deemed to be the articles of incorporation of the new cooperative; and in the case of a merger, the articles of incorporation of the surviving cooperative shall be deemed to be amended to the extent, if any, that changes therein are provided for in the articles of merger.

History: En. Sec. 15, Ch. 172, L. 1939.

14-516. Conversion of existing corporations. Any corporation organized under the laws of this state for the purpose, among others, of supplying electric energy in rural areas may be converted into a cooperative and become subject to this act with the same effect as if originally organized under this act by complying with the following requirements:

(a) The proposition for the conversion of such corporation into a cooperative and proposed articles of conversion to give effect thereto shall be first approved by the board of trustees or the board of directors, as the case may be, of such corporation. The proposed articles of conversion shall recite in the caption that they are executed pursuant to this act and shall state: (1) the name of the corporation prior to its conversion into a cooperative; (2) the address of the principal office of such corporation; (3) the date of the filing of its articles of incorporation in the office of the secretary of state; (4) the statute or statutes under which such corporation was organized; (5) the name assumed by such corporation; (6) a statement that such corporation elects to become a cooperative, non-profit, membership corporation subject to this act; (7) the manner and basis of converting either memberships in or shares of stock of such corporation into memberships therein after completion of the conversion; and (8) any provisions not inconsistent with this act deemed necessary or advisable for the conduct of its business and affairs;

(b) The proposition for the conversion of such corporation into a cooperative and the proposed articles of conversion approved by the board of trustees or board of directors, as the case may be, of such corporation shall then be submitted to a vote of the members or stockholders, as the case may be, of such corporation at any duly held annual or special meeting thereof, the notice of which shall set forth full particulars concerning the proposed conversion. The proposition for the conversion of such corporation into a cooperative and the proposed articles of conversion, with such amendments thereto as the members or stockholders of such corporation shall choose to make therein, shall be deemed to be approved upon the affirmative vote of not less than two-thirds of those members of such corporation voting thereon at such meeting, or, if such corporation is a stock corporation, upon the affirmative vote of the holders of not less than two-thirds of the capital stock of such corporation represented at such meeting;

(c) Upon such approval by the members or stockholders of such corporation, articles of conversion in the form approved by such members or stockholders of such corporation shall be executed and acknowledged on behalf of such corporation by its president or vice-president and its corporate seal shall be affixed thereto and attested by its secretary or assistant secre-

tary. The president or vice-president executing such articles of conversion on behalf of such corporation shall also make and annex thereto an affidavit stating that the provisions of this section with respect to the approval of its trustees or directors and its members or stockholders, of the proposition for the conversion of such corporation into a cooperative and such articles of conversion were duly complied with. Such articles of conversion and affidavit shall be submitted to the secretary of state for filing as provided in this act; and

(d) The term "articles of incorporation" as used in this act shall be deemed to include the articles of conversion of a converted corporation.

History: En. Sec. 16, Ch. 172, L. 1939.

14-517. Initiative by members. Notwithstanding any other provision of this act, there shall be submitted to the members of a cooperative any proposition embodied in a petition signed by not less than ten per centum (10%) of its members, together with any document submitted with such petition to give the effect to the proposition, either at a special meeting of the members held within forty-five (45) days after the presentation of such petition or, if the date of the next annual meeting of members falls within ninety (90) days after such presentation or if the petition so requests, at such annual meeting. The approval of the board of trustees shall not be required in respect of any proposition or document submitted to the members pursuant to this section and approved by them, but such proposition or document shall be subject to all other applicable provisions of this act. The affidavit or affidavits required to be filed with any such document pursuant to applicable provisions of this act shall, in such case, be modified to show compliance with the provisions of this section.

History: En. Sec. 17, Ch. 172, L. 1939.

14-518. Dissolution. (a) A cooperative which has not commenced business may dissolve voluntarily by delivering to the secretary of state articles of dissolution, executed and acknowledged on behalf of the cooperative by a majority of the incorporators, which shall state:

- (1) The name of the cooperative;
 - (2) The address of its principal office;
 - (3) The date of its incorporation;
 - (4) That the cooperative has not commenced business;
 - (5) That the amount, if any, actually paid in on account of membership fees, less any part thereof disbursed for necessary expenses, has been returned to those entitled thereto and that all easements shall have been released to the grantors;
 - (6) That no debt of the cooperative remains unpaid; and
 - (7) That a majority of the incorporators elect that the cooperative be dissolved. Such articles of dissolution shall be submitted to the secretary of state for filing as provided in this act;
- (b) A cooperative which has commenced business may dissolve voluntarily and wind up its affairs in the following manner:

(1) The board of trustees shall first recommend that the cooperative be dissolved voluntarily and thereafter the proposition that the cooperative be dissolved shall be submitted to the members of the cooperative at any

annual or special meeting the notice of which shall set forth such proposition. The proposed voluntary dissolution shall be deemed to be approved upon the affirmative vote of not less than two-thirds of those members voting thereon at such meeting;

(2) Upon such approval, a certificate of election to dissolve, hereinafter designated the "certificate," shall be executed and acknowledged on behalf of the cooperative by its president or vice-president, and its corporate seal shall be affixed thereto and attested by its secretary or assistant secretary. The certificate shall state: (a) the name of the cooperative; (b) the address of its principal office; (c) the names and addresses of its trustees; and (d) the total number of members who voted for and against the voluntary dissolution of the cooperative. The president or vice-president executing the certificate shall also make and annex thereto an affidavit stating that the provisions of this subsection were duly complied with. Such certificate and affidavit shall be submitted to the secretary of state for filing as provided in this act;

(3) Upon the filing of the certificate and affidavit by the secretary of state, the cooperative shall cease to carry on its business except insofar as may be necessary for the winding up thereof, but its corporate existence shall continue until articles of dissolution have been filed by the secretary of state;

(4) After the filing of the certificate and affidavit by the secretary of state the board of trustees shall immediately cause notice of the winding up proceedings to be mailed to each known creditor and claimant and to be published once a week for two successive weeks in a newspaper of general circulation in the county in which the principal office of the cooperative is located;

(5) The board of trustees shall have full power to wind up and settle the affairs of the cooperative and shall proceed to collect the debts owing to the cooperative, convey and dispose of its property and assets, pay, satisfy and discharge its debts, obligations and liabilities and do all other things required to liquidate its business and affairs, and after paying or adequately providing for the payment of all its debts, obligations and liabilities, shall distribute the remainder of its property and assets among its members in proportion to the aggregate patronage of each such member during the seven years next preceding the date of such filing of the certificate, or, if the cooperative shall not have been in existence for such period, during the period of its existence; and

(6) When all debts, liabilities and obligations of the cooperative have been paid and discharged or adequate provision shall have been made therefor, and all of the remaining property and assets of the cooperative shall have been distributed to the members pursuant to the provisions of this section, the board of trustees shall authorize the execution of articles of dissolution which shall thereupon be executed and acknowledged on behalf of the cooperative by its president or vice-president, and its corporate seal shall be affixed thereto and attested by its secretary. Such articles of dissolution shall recite in the caption that they are executed pursuant to this act and shall state: (a) the name of the cooperative; (b) the address of the principal office of the cooperative; (c) that the cooperative has here-

tofore delivered to the secretary of state a certificate of election to dissolve and the date on which the certificate was filed by the secretary of state in the records of his office; (d) that all debts, obligations and liabilities of the cooperative have been paid and discharged or that adequate provision has been made therefor; (e) that all the remaining property and assets of the cooperative have been distributed among the members in accordance with the provisions of this section; and (f) that there are no actions or suits pending against the cooperative. The president or vice-president executing the articles of dissolution shall also make and annex thereto an affidavit stating that the provisions of this subsection were duly complied with. Such articles of dissolution and affidavit accompanied by proof of the publication required in this subsection, shall be submitted to the secretary of state for filing as provided in this act.

History: En. Sec. 18, Ch. 172, L. 1939.

Collateral References

13 Am. Jur. 1157, Corporations, § 1285.

14-519. Filing of articles. Articles of incorporation, amendment, consolidation, merger, conversion, dissolution, as the case may be, when executed and acknowledged and accompanied by such affidavits as may be required by applicable provisions of this act, shall be presented to the secretary of state for filing in the records of his office. If the secretary of state shall find that the articles presented conform to the requirements of this act, he shall, upon the payment of the fees as in this act provided, file the articles so presented in the records of his office and upon such filing the incorporation, amendment, consolidation, merger, conversion, or dissolution provided for therein shall be in effect. The secretary of state immediately upon the filing in his office of any articles pursuant to this act shall transmit a certified copy thereof to the county clerk of the county in which the principal office of each cooperative or corporation affected by such incorporation, amendment, consolidation, merger, conversion or dissolution shall be located. The clerk of any county, upon receipt of any such certified copy, shall file and index the same in the records of his office, but the failure of the secretary of state or of a clerk of a county to comply with the provisions of this section shall not invalidate such articles. The provisions of this section shall also apply to certificates of election to dissolve and affidavits of compliance executed pursuant to subsection (b) (2) of section 14-518.

History: En. Sec. 19, Ch. 172, L. 1939.

14-520. Refunds to members. Revenues of a cooperative for any fiscal year in excess of the amount thereof necessary:

(a) To defray expenses of the cooperative and of the operation and maintenance of its facilities during such fiscal year;

(b) To pay interest and principal obligations of the cooperative coming due in such fiscal year;

(c) To finance, or to provide a reserve for the financing of, the construction or acquisition by the cooperative of additional facilities to the extent determined by the board of trustees;

(d) To provide a reasonable reserve for working capital;

(e) To provide a reserve for the payment of indebtedness of the cooperative maturing more than one (1) year after the date of the incurrence

of such indebtedness in an amount not less than the total of the interest and principal payments in respect thereof required to be made during the next following fiscal year; and

(f) To provide a fund which shall be not less than two per cent (2%) nor more than five per cent (5%) of the balance remaining for education in cooperation and for the dissemination of information concerning the effective use of electric energy and other services made available by the cooperative, shall, unless otherwise determined by a vote of the members, be distributed by the cooperative to its members as patronage refunds pro rated in accordance with the patronage of the cooperative by the respective members paid for during such fiscal year. Nothing herein contained shall be construed to prohibit the payment by a cooperative of all or any part of its indebtedness prior to the date when the same shall become due.

History: En. Sec. 20, Ch. 172, L. 1939.

14-521. Disposition of property. A cooperative may not sell, mortgage, lease or otherwise dispose of or encumber all or any substantial portion of its property unless such sale, mortgage, lease or other disposition or encumbrance is authorized at a duly held meeting of the members thereof by the affirmative vote of not less than two-thirds ($\frac{2}{3}$) of all of the members of the cooperative, and unless the notice of such proposed sale, mortgage, lease or other disposition or encumbrance shall have been contained in the notice of the meeting; provided, however, that notwithstanding anything herein contained, or any other provisions of law, the board of trustees of a cooperative, without authorization by the members thereof, shall have full power and authority to authorize the execution and delivery of a mortgage or mortgages or a deed or deeds of trust upon, or the pledging or encumbering of, any or all of the property, assets, rights, privileges, licenses, franchises and permits of the cooperative, whether acquired or to be acquired, and wherever situated, as well as the revenues and income therefrom, all upon such terms and conditions as the board of trustees shall determine, to secure any indebtedness of the cooperative to the United States of America or any instrumentality or agency thereof.

History: En. Sec. 21, Ch. 172, L. 1939.

29 C.J.S. Electricity §§ 15, 19.

Collateral References

See 13 Am. Jur. 817, Corporations, §§ 801 et seq.

Electricity Ⓒ2-4, 8.

14-522. Nonliability of members for debts of cooperative. The private property of the members of a cooperative shall be exempt from execution for the debts of the cooperative and no member shall be liable or responsible for any debts of the cooperative.

History: En. Sec. 22, Ch. 172, L. 1939.

Collateral References

Electricity Ⓒ8.

29 C.J.S. Electricity § 19.

14-523. Recordation of mortgages. Any mortgage, deed of trust or other instrument executed by a cooperative or foreign corporation transacting business in this state pursuant to this act, which, by its terms, creates a lien upon real and personal property then owned or after acquired and which is recorded as a mortgage of real property in each county wherein such property is located, or is to be located, shall have the same force and

effect as if the instrument were also recorded or filed in the proper office in each such county as a mortgage of personal property. Recordation of any such mortgage deed of trust or other instrument shall cause the lien thereof to attach to all after acquired property of the mortgagor of the nature therein described as being mortgaged or pledged thereby immediately upon the acquisition thereof by the mortgagor and such lien shall be superior to all claims of creditors of the mortgagor and purchasers of such property and to all other liens except liens of prior record affecting such property.

History: En. Sec. 23, Ch. 172, L. 1939.


14-524. Waiver of notice. Whenever any notice is required to be given under the provisions of this act or under the provisions of the articles of incorporation or by-laws of a cooperative, waiver thereof in writing, signed by the person or persons entitled to such notice, whether before or after the time fixed for the giving of such notice, shall be deemed equivalent to such notice. If a person or persons entitled to notice of a meeting shall attend such meeting, such attendance shall constitute a waiver of notice of the meeting, except in case the attendance is for the express purpose of objecting to the transaction of any business because the meeting shall not have been lawfully called or convened.

History: En. Sec. 24, Ch. 172, L. 1939.

14-525. Trustees, officers or members — notaries. No person who is authorized to take acknowledgments under the laws of this state shall be disqualified from taking acknowledgments of instruments executed in favor of a cooperative or to which it is a party, by reason of being an officer, director or member of such cooperative.

History: En. Sec. 25, Ch. 172, L. 1939.

Collateral References

Acknowledgment  20(3).

1 C.J.S. Acknowledgments § 54.

14-526. Foreign corporations. Any corporation organized under the laws of a state adjacent to this state on a non-profit or a cooperative basis for the purpose of supplying electric energy in rural areas and owning and operating electric transmission or distribution lines in such state shall be permitted to extend its lines into and transact business in this state without complying with any statute of this state pertaining to the qualification of foreign corporations for the transaction of business in this state. Any such foreign corporation, as a prerequisite to the extension of its lines into and the transaction of business in this state, shall, by an instrument executed and acknowledged in its behalf by its president or vice-president under its corporate seal attested by its secretary, designate the secretary of state its agent to accept service of process in its behalf. In the event any process shall be served upon the secretary of state, he shall forthwith forward the same by registered mail to such corporation at the address thereof specified in such instrument. Any such corporation may sue and be sued in the courts of this state to the same extent that a cooperative may sue or be sued in such courts. Any such foreign corporation may secure its notes, bonds or other evidences of indebtedness by mortgage, pledge, deed of trust or other encumbrance upon any or all of its then owned or after acquired real or

personal property, assets or franchises, located or to be located in this state, and also upon the revenues and income to be derived therefrom.

History: En. Sec. 26, Ch. 172, L. 1939.

29 C.J.S. Electricity § 15.

Collateral References

See generally, 23 Am. Jur. 1, Foreign Corporations.

Electricity ⌚ 4.

14-527. Fees. The secretary of state shall charge and collect for:

- (a) Filing articles of incorporation, five dollars (\$5.00);
- (b) Filing articles of amendment, five dollars (\$5.00);
- (c) Filing articles of consolidation or merger, five dollars (\$5.00);
- (d) Filing articles of conversion, five dollars (\$5.00);
- (e) Filing certificate of election to dissolve, five dollars (\$5.00);
- (f) Filing articles of dissolution, five dollars (\$5.00); and
- (g) Filing certificate of change of principal office, five dollars (\$5.00).

History: En. Sec. 27, Ch. 172, L. 1939.

Collateral References

Electricity ⌚ 3.

29 C.J.S. Electricity § 10.

14-528. Exemption from excise taxes—license fee. Cooperatives and foreign corporations, transacting business in this state pursuant to the provisions of this act, shall pay annually, on or before the first day of July, to the secretary of state, a fee of ten dollars (\$10.00) for each one hundred (100) persons or fractions thereof to whom electricity is supplied within the state, but shall be exempt from all other excise and income taxes of whatsoever kind or nature.

History: En. Sec. 28, Ch. 172, L. 1939.

Collateral References

Electricity ⌚ 10.

29 C.J.S. Electricity § 4.

14-529. Exemption from jurisdiction of the public service commission. Cooperatives and foreign corporations transacting business in this state pursuant to this act shall be exempt in all respects from the jurisdiction and control of the public service commission of this state.

History: En. Sec. 29, Ch. 172, L. 1939.

Collateral References

Electricity ⌚ 1, 2.

29 C.J.S. Electricity §§ 2, 3.

14-530. Definitions. In this act, unless the context otherwise requires:

(a) "Rural area" means any area not included within the boundaries of any incorporated or unincorporated city, town, village or borough having a population in excess of thirty-five hundred (3500) persons at the time of the passage and approval of chapter 172, Session Laws of Montana, 1939, or subsequent thereto.

(b) "Person" includes any natural person, firm, association, corporation, business trust, partnership, federal agency, state or political subdivision or agency thereof or any body politic; and

(c) "Member" means each incorporator of a cooperative and each person admitted to and retaining membership therein, and shall include a husband and wife admitted to joint membership.

History: En. Sec. 30, Ch. 172, L. 1939;
amd. Sec. 1, Ch. 151, L. 1949.

Collateral References

Electricity ⌚ 2, 3.

29 C.J.S. Electricity § 10.

14-531. Construction of act. This act shall be construed liberally. The enumeration of any object, purpose, power, manner, method or thing shall not be deemed to exclude like or similar objects, purposes, powers, manners, methods or things.

History: En. Sec. 31, Ch. 172, L. 1939.

TITLE 15

CORPORATIONS

- Chapter 1. The creation of private corporations, 15-101 to 15-121.
2. Change in organization—amendment of articles—extension of life of certain corporations, 15-201 to 15-225.
3. By-laws, 15-301 to 15-303.
4. Directors, 15-401 to 15-412.
5. Meetings of stockholders and directors—elections, 15-501 to 15-509.
6. Corporate stock and rights of stockholders—uniform stock transfer act, 15-601 to 15-651.
7. Assessments, 15-701 to 15-721.
8. Powers and duties of corporations, 15-801 to 15-811.
9. Procedure for sale of corporate property, 15-901 to 15-913.
10. Corporate records, 15-1001, 15-1002.
11. Dissolution of corporations by quo warranto—by decree of court—by act of directors and by other methods, 15-1101 to 15-1118.
12. Scope of law—legislature may repeal, 15-1201, 15-1202.
13. Colleges and seminaries, incorporation of, 15-1301 to 15-1303.
14. Religious, social and benevolent corporations, 15-1401 to 15-1409.
15. Religious corporations sole, 15-1501 to 15-1507.
16. Mining corporations—transfer agencies, 15-1601 to 15-1603.
17. Foreign corporations, 15-1701 to 15-1713.
18. Merger of corporations engaged in petroleum products business, 15-1801 to 15-1807.
19. Consolidation or merger of corporations, 15-1901 to 15-1908.

CHAPTER 1

THE CREATION OF PRIVATE CORPORATIONS

- Section 15-101. Corporation defined.
- 15-102. What are public and what private corporations.
- 15-103. Private corporations—how formed.
- 15-104. Purposes for which private corporations may be formed.
- 15-105. Formation of mortuary, undertaking, crematory, mausoleum and real estate companies authorized.
- 15-106. Validation of charters.
- 15-107. Name of instrument creating corporation.
- 15-108. Articles of incorporation—what to contain.
- 15-109. Certain corporations to state further facts in articles.
- 15-110. How executed—subscription and acknowledgment.
- 15-111. Manner of forming corporations.
- 15-112. Filing of articles of incorporation in county where corporation holds real estate.
- 15-113. Validation of articles of incorporation.
- 15-114. Effect of validation.
- 15-115. Release from payment of charges and fees—filing fees.
- 15-116. Certified copy of articles prima facie evidence.
- 15-117. Evidence of corporate existence or capacity.
- 15-118. Evidence of corporate character of national banks.
- 15-119. Repealed.
- 15-120. Repealed.
- 15-121. Existing corporations not affected.

15-101. (5900) Corporation defined. A corporation is a creature of the law, having certain powers and duties of a natural person. Being created by the law, it may continue for any length of time which the law prescribes.

History: En. Sec. 390, Civ. C. 1895; re-en. Sec. 3805, Rev. C. 1907; re-en. Sec. 5900, R. C. M. 1921. Cal. Civ. C. Sec. 283. Field Civ. C. Sec. 379.

NOTE.—For history of corporation laws of state, see *State ex rel. Cascade Bank v. Yoder*, 39 M 204, 103 P 499.

Cross-References

Agent failing to comply with law, penalty, sec. 94-2320.

Assessment of property, sec. 84-419.

Criminal proceedings against corporations, secs. 94-9601 to 94-9610.

Frauds in management of corporations, penalties, secs. 94-2301 to 94-2325.

License taxes, secs. 84-1501 to 84-1519.

Operation and Effect

The issuance by the secretary of state of a certificate that a certified copy of

the articles of incorporation of a company, organized under the provisions of the Civil Code of 1895, containing the required statement of facts, had been filed in his office, was a prerequisite to the legal formation of a domestic corporation. *State ex rel. Travelers' Ins. Co. v. Rotwitt*, 18 M 87, 90, 44 P 409.

References

Cited or applied as section 3805, Revised Codes, in *In re Beck's Estate*, 44 M 561, 572, 121 P 784; *Sun River S. & L. Co. v. Montana T. & S. Bk.*, 81 M 222, 262 P 1039; *Barnett Iron Works, Inc. v. Harmon*, 87 M 38, 41, 285 P 191.

Collateral References

Corporations—1.

18 C.J.S. Corporations § 1.

13 Am. Jur. 154, Corporations, §§ 2-5.

15-102. (5901) What are public and what private corporations. Corporations are either public or private. Public corporations are formed or organized for the government of a portion of the state; all other corporations are private.

History: En. Sec. 391, Civ. C. 1895; re-en. Sec. 3806, Rev. C. 1907; re-en. Sec. 5901, R. C. M. 1921. Cal. Civ. C. Sec. 284.

Public Corporation

The existence of a public corporation does not depend upon the exercise of all of the functions of government within its prescribed limits. *Crow Creek Irr. Dist. v. Crittenden*, 71 M 66, 69, 227 P 63.

Id. Held, that an irrigation district created under chapter 146, Laws of 1909, (89-1201 et seq.) is a public corporation exercising essential governmental functions, one of which is the right to levy taxes, organized for the government of a portion of the state and for the promotion of the public welfare, and as such must

be deemed a subdivision of the state within the meaning of section 25-209, relieving it, as such subdivision, from the payment of fees for the recordation of papers in the county clerk and recorder's office.

References

Cited or applied as section 3806, Revised Codes, in *State ex rel. Quintin v. Edwards*, 38 M 250, 268, 99 P 940; *In re Beck's Estate*, 44 M 561, 572, 121 P 784.

Collateral References

Corporations—3.

18 C.J.S. Corporations § 18.

13 Am. Jur. 171, Corporations, § 17.

15-103. (5902) Private corporations — how formed. Private corporations may be formed by the voluntary association of any three or more persons in the manner prescribed in this chapter.

History: En. Sec. 392, Civ. C. 1895; re-en. Sec. 3807, Rev. C. 1907; re-en. Sec. 5902, R. C. M. 1921. Cal. Civ. C. Sec. 285.

References

Cited or applied as section 3807, Revised Codes, in *In re Beck's Estate*, 44 M 561, 572, 121 P 784; *Daily v. Marshall*, 47 M 377, 392, 133 P 681; *Dunham v. Natural Bridge Ranch Co.*, 115 M 579, 583, 147 P 2d 902.

Collateral References

Corporations—15.

18 C.J.S. Corporations § 36.

13 Am. Jur. 181, Corporations, §§ 29 et seq.

Liability of corporation on contracts of promoters. 17 ALR 452.

Effect upon the corporate existence of failure to file certificates in organizing a corporation. 22 ALR 376.

Duty of promoter to account for proceeds of sale of stock issued to him. 43 ALR 1363.

Binding effect of subscription to stock in corporation to be formed. 61 ALR 1463.

15-104. (5903) Purposes for which private corporations may be formed.

The purposes for which the private corporations mentioned in the last section may be formed are:

1. The support of public worship;
2. The support of any religious, benevolent, charitable, educational, or missionary undertaking;
3. The support of any literary or scientific undertaking, the maintenance of a library, or the promotion of painting, music, or other fine art;
4. The encouragement of agriculture and horticulture and the processing and marketing of such products;
5. The maintenance of public parks, and of facilities for skating and other innocent sports;
6. The maintenance of a club for social enjoyment;
7. The maintenance of a public or private cemetery;
8. The prevention and punishment of theft or wilful injuries to property and insurance against such risks;
9. The insurance of human life, dealing in annuities, and the insurance of fidelity of persons holding places of public or private trust;
10. The insurance of human beings against sickness or personal injury;
11. The insurance of the lives of domestic animals or their loss or damage;
12. The insurance of property against marine risks;
13. The insurance of property against loss or injury by fire, or any of the elements, or by accident, or by any risk of inland transportation;
14. The transaction of any banking business or trust deposit and security business, and the insurance of the safekeeping of all kinds of personal property;
15. The construction and maintenance of a railroad and of a telegraph line in connection therewith, and a street railroad of any kind;
16. The construction and maintenance of any other species of roads, and of bridges in connection therewith;
17. The construction and maintenance of a bridge;
18. The construction and maintenance of a telegraph line, telephone or electric light line;
19. The establishment and maintenance of a line of stages;
20. The establishment and maintenance of a ferry;
21. The carriage of property and persons by express;
22. The building and navigation of steamboats and carriage of persons and property thereon;
23. The supply of water to the public;
24. The manufacture and supply of gas, or the supply of light or heat to the public by any other means;
25. The transaction of any mercantile, commercial, industrial, manufacturing, mining, mechanical, or chemical business;
26. The transaction of a printing and publishing business;
27. The erection of buildings and the accumulation and loan of funds for the purchase of real estate;
28. The establishment and maintenance of a hotel;

29. The improvement of the breed of domestic animals by importation, sale, or otherwise;

30. The transaction of the business of raising, processing, storing, buying, and selling of all agricultural, horticultural, and other farm products, including grains, fruits, all classes of farm animals and their products;

31. The construction of canals, ditches, flumes, and other works for conveying water, and reservoirs for storing the same, and the boring of artesian wells;

32. To purchase or otherwise acquire, own, hold, mortgage, pledge, sell, assign, transfer, or otherwise dispose of shares of the capital stock of, or any bonds, securities, or other evidence of indebtedness created by, any other corporation or corporations wherever organized, with all the rights, powers, and privileges of ownership thereof; provided, however, that it is not intended hereby to give the right to exercise any of the powers or purposes in this subdivision mentioned in any case where it is forbidden so to do by any provision of the constitution or statutes of the United States of America or the state of Montana.

No corporation must be formed for any other purpose than those mentioned in this section.

History: En. Sec. 393, Civ. C. 1895; re-en. Sec. 3808, Rev. C. 1907; amd. Sec. 1, Ch. 106, L. 1909; amd. Sec. 1, Ch. 95, L. 1921; re-en. Sec. 5903, R. C. M. 1921. Cal. Civ. C. Sec. 286.

Corporation Not Authorized to Practice Law

Nothing contained in this section authorizes a corporation to practice law. *State ex rel. Freebourn v. Merchants' Credit Service, Inc.*, 104 M 76, 102, 66 P 2d 337.

Determination of Nature of Association for Federal Income Tax Purposes

Although under state law a corporation may not be organized to practice medicine, yet an association which has the criteria of a corporation may be considered a corporation for federal tax purposes. The determination of the nature of associations for federal tax purposes is not by the state criteria but rather by the special criteria sanctioned by the tax law, the regulations, and the courts. *United States v. Kintner*, 216 F 2d 418, 424.

Operation and Effect

Under the twenty-fifth subdivision of this section, a corporation may be organized for the purpose of storing goods in a warehouse for shipment. *Orient Ins. Co.*

15-105. (5903.1) Formation of mortuary, undertaking, crematory, mausoleum and real estate companies authorized. That undertaking, mortuary, crematory, mausoleum and real estate companies may be incorporated under the general laws of this state governing corporations for profits, either for that purpose alone or in connection with other purposes.

History: En. Sec. 1, Ch. 52, L. 1931.

v. N. P. Ry. Co., 31 M 502, 510, 78 P 1036.

The only provisions looking to merger of corporations are found in section 15-1603 and this section authorizing one corporation to acquire shares of stock in another. *United Missouri River Power Co. v. Yoder*, 41 M 245, 247, 108 P 912.

This section authorizes the formation of a corporation to supply water to the public; and section 15-109 gives further recognition to the same right. *Bailey v. Tintinger*, 45 M 154, 175, 122 P 575.

References

Cited or applied as section 393, Civil Code, before amendment, in *Massachusetts Loan & Trust Co. v. Hamilton*, 88 Fed 588, 590; *In re Hauge's Estate*, 92 M 36, 41, 9 P 2d 1065; as section 3808, Revised Codes, as amended, in *Merges v. Altenbrand*, 45 M 355, 363, 123 P 21; *Helena etc. Ry. Co. v. City of Helena*, 47 M 18, 34, 130 P 446; *Daily v. Marshall*, 47 M 377, 393, 133 P 681; *Wells Fargo & Co. v. Harrington*, 54 M 235, 239, 169 P 463.

Collateral References

Corporations 14.
18 C.J.S. *Corporations* § 47.
13 Am. Jur. 182, *Corporations*, §§ 30-33.

15-106. (5903.2) Validation of charters. That all associations or companies which have heretofore obtained charters under the general laws governing corporations for profit, authorizing the operation of undertaking, mortuary, crematory, mausoleum or real estate companies, either alone or in connection with other purposes, are hereby declared to be valid and legal corporations for the purposes specified in their charters, including the operation of undertaking, mortuaries, crematories or mausoleums; and also to include the right to purchase, acquire, own, hold, mortgage, pledge, sell, assign, transfer, or otherwise dispose of real property.

History: En. Sec. 2, Ch. 52, L. 1931.

Collateral References

Corporations ⇐ 26.

18 C.J.S. Corporations §§ 34, 92.

15-107. (5904) Name of instrument creating corporation. The instrument by which a private corporation is formed is called "articles of incorporation."

History: En. Sec. 402, Civ. C. 1895; re-en. Sec. 3817, Rev. C. 1907; re-en. Sec. 5904, R. C. M. 1921. Cal. Civ. C. Sec. 289.

3817, Revised Codes, in *Merges v. Altenbrand*, 45 M 355, 363, 123 P 21; *Barnett Iron Works, Inc. v. Harmon*, 87 M 38, 41, 285 P 191.

References

Cited or applied as section 402, Civil Code, in *State ex rel. Travelers' Ins. Co. v. Rotwitt*, 18 M 87, 89, 44 P 409; as section

Collateral References

Corporations ⇐ 18.

18 C.J.S. Corporations § 52.

15-108. (5905) Articles of incorporation—what to contain. Articles of incorporation must be prepared, setting forth:

1. The name of the corporation;
2. The purpose for which it is formed;
3. The name of the county, and the city, town or place within the county, in which its principal office or principal place of business is to be located in this state;
4. The term for which it is to exist, not exceeding forty (40) years;
5. The number of its directors or trustees, which shall not be less than three (3) nor more than thirteen (13), and the names and residences of those who are appointed for the first three (3) months, and until their successors are elected and qualified;
6. The amount of its capital stock, and the number of shares into which it is divided, and if there be more than one (1) class of stock created by the articles of incorporation, a designation of each class, with the amount of stock of each class and the number of shares into which it is divided, and a designation of the voting powers or rights, if any, of any or all classes of stock, with any limitation or restriction thereof, and with either a designation and description of, or a delegation of power to the board of directors of the corporation to designate and describe, the different series, if any, of any class of such stock, the manner of issuing, preferences, limitations, restrictions, and other terms and conditions of or on which each class of said stock, or any series thereof, shall be issued. The articles of incorporation may also contain such provisions as may be desired, limiting or denying to the present or future stockholders of any or all classes of stock any pre-emptive or preferential right to subscribe to any or all additional issues of stock of the corporation of any or all classes, or bonds, debentures or other obligations convertible into stock, subject to the provisions of the

constitution and laws of Montana fixing the required representation and proportion of outstanding capital stock required to be represented and voted, for specified action, at any and all corporate meetings, elections, votes, or consent proceedings, the articles of incorporation may contain provisions fixing the proportion of each or any class of stock which shall be required to be represented or voted, for specified action, at any such meeting, election or vote, or consent proceeding. The articles of incorporation may also contain provisions for issuing bonds, debentures or other obligations, convertible into stock of any class, in amounts, upon the terms, in the manner and upon the conditions, which shall be provided by resolution of the board of directors. The articles of incorporation may also contain provision making, or delegating power to the board of directors of the corporation to make, the stock of any class or series thereof convertible into stock of any other class or classes or of any other series of the same or any other class or classes, upon such terms and conditions as may be expressed in the articles of incorporation or in a resolution of the board of directors of the corporation, if delegation of power so to do is set forth in the articles of incorporation;

7. If there is a capital stock, the amount actually subscribed, and by whom;

8. If the stock is assessable, it must be so stated.

History: En. Sec. 403, Civ. C. 1895; amd. Sec. 1, Ch. 102, L. 1905; re-en. Sec. 3818, Rev. C. 1907; amd. Sec. 1, Ch. 88, L. 1915; re-en Sec. 5905, R. C. M. 1921; amd. Sec. 1, Ch. 35, L. 1931. Cal. Civ. C. Sec. 290.

NOTE.—This section held impliedly amended by sections 15-901 to 15-910 (6004) insofar as section 15-108 might authorize a corporation to provide in its articles an absolute grant of power to its directors to sell all its assets at the pleasure of the directors. Opinions of Attorney General Vol. 15, No. 185.

References

Cited or applied as section 3818, Revised Codes, as amended, in *Enterprise Sheet Metal Works v. Schendel*, 55 M 42, 52, 173 P 1059; *Alley v. Butte & Western Min. Co.*, 77 M 477, 491, 251 P 517; *Cobb et al. v. Lee*, 80 M 328, 336, 260 P 722; *State ex rel. Nagle v. The Leader Co.* et

al., 97 M 586, 594, 37 P 2d 561; *Dunham v. Natural Bridge Ranch Co.*, 115 M 579, 583, 147 P 2d 902.

Collateral References

13 Am. Jur. 215, Corporations, §§ 73 et seq.

Constitutionality, construction, and effect of statutory or charter provisions relating to the sale of all, or substantially all, of the assets of corporation or division or distribution of proceeds. 79 ALR 624.

Conclusiveness of charter as regards character, kind, or purposes of corporation. 119 ALR 1012.

Construction and application of provisions of statute, charter, by-laws, or stock certificates conferring upon holders of preferred or other specified class of stock a right to vote in event of nonpayment of dividends or other specified conditions. 154 ALR 418.

15-109. (5906) Certain corporations to state further facts in articles. The articles of incorporation in the following cases must also state:

1. In case of assessment life insurance corporations, the articles of incorporation shall state as provided in sections 40-2002 and 40-2003 of this code.

2. And in articles of incorporation of institutions of learning, shall state as provided in section 15-1303 of this code.

3. And in case of building and loan associations, the corporation shall be formed as provided in section 7-101 et seq. of this code.

4. In case of religious, benevolent, and other like corporations, the articles of incorporation shall state as provided in section 15-1403 of this code.

5. Articles of incorporation of any railroad company shall also state the names of the counties, states, territories, and countries where the termini of said road are to be located, and those through which said road shall pass, and the general route of said road, also the amount of capital stock necessary to construct the same.

6. In the case of the formation of corporations for the construction of ditches and flumes, the articles of incorporation must also state the stream or streams from which the water is to be taken, the point or place on said stream at or near which the water is to be taken out, the line of the ditch or flume, and the use to which the water is to be applied.

7. In case of tunnel corporations, the articles of incorporation shall also state the place where said tunnel is to be run, the termini, its course, and the minerals or ore designed to be excavated.

8. In the case of telegraph or telephone companies, the articles of incorporation shall also state the termini of such line or lines, and the counties through which they shall pass.

History: En. Sec. 404, Civ. C. 1895;
re-en. Sec. 3819, Rev. C. 1907; re-en. Sec.
5906, R. C. M. 1921.

Operation and Effect

Section 15-104 authorizes the formation of a corporation to supply water to the public, and this section gives further recognition to the same right. *Bailey v. Tintinger*, 45 M 154, 175, 122 P 575.

15-110. (5907) How executed—subscription and acknowledgment. The articles of incorporation must be subscribed by three or more persons, and acknowledged by each before some officer authorized to take and certify acknowledgments of conveyances of real property.

History: En. Sec. 405, Civ. C. 1895;
re-en. Sec. 3820, Rev. C. 1907; re-en. Sec.
5907, R. C. M. 1921. Cal. Civ. C. Sec. 292.

Collateral References

Corporations § 18.
18 C.J.S. Corporations § 56.

References

Dunham v. Natural Bridge Ranch Co.,
115 M 579, 583, 147 P 2d 902.

15-111. (5908) Manner of forming corporations. (1) At any time hereafter any three or more persons who may desire to form a company for the purpose of carrying on any kind of manufacturing, mining, mechanical, or chemical business; of digging ditches, of building flumes or running tunnels; of purchasing, holding, developing, improving, using, leasing, selling, conveying, or otherwise disposing of water powers and the sites thereof, and lands necessary or useful therefor, or for the industries and habitations arising or growing up, or to arise or grow up, in connection with or about the same; of purchasing, holding, laying out, platting, developing, leasing, selling, dealing in, conveying, or otherwise using or disposing of town-sites or towns, or the lots, blocks, or subdivisions thereof, or lots, blocks, or subdivisions in any town, village, or city; or of carrying on any other branch of business designed to aid in the industrial or productive interests of the country, and the development therefor of one or more of the afore-said branches of business, or for any of the purposes for which private

corporations may be formed, as set forth in section 15-104 of this code, must prepare, sign, acknowledge, and file articles of incorporation in the office of the county clerk of the county in which the principal business of the company is to be transacted, and a copy thereof, certified by the county clerk, with the secretary of state, whereupon the secretary of state must issue to the corporation, over the great seal of the state, a certificate that a copy of the articles containing the required statement of facts has been filed in his office.

(2) Thereupon the persons signing the articles and their associates and successors shall be a body politic and corporate by the name stated in the certificate, and for a term of forty years, unless in the articles of incorporation otherwise stated, or in this code otherwise specially provided, but in no case, where not otherwise specially provided in this code, must such term exceed forty years; provided, however, that no articles of incorporation shall be accepted and filed by the secretary of state which designate a name for the proposed corporation which is the same as that of any existing domestic corporation, or which, in the judgment of the secretary of state, is so similar to the name of any existing domestic corporation as to mislead or confuse persons dealing with such corporations; and provided further, that nothing herein shall affect the present term of existence of any corporation heretofore incorporated under this section for a period of forty years.

History: Ap. p. Sec. 1, p. 25, L. 1867; amd. Sec. 1, p. 406, Cod. Stat. 1871; re-en. Sec. 244, 5th Div. Rev. Stat. 1879; amd. Sec. 446, 5th Div. Comp. Stat. 1887; amd. Sec. 1, p. 111, L. 1893; amd. Sec. 411, Civ. C. 1895; amd. Sec. 1, Ch. 163, L. 1907; re-en. Sec. 3825, Rev. C. 1907; amd. Sec. 2, Ch. 106, L. 1909; re-en. Sec. 5908, R. C. M. 1921.

Cross-Reference

Fees required, sec. 25-102.

Fraud—Courts May Disregard Corporate Entity

Courts may disregard a corporate entity where the corporate organization is used for the purpose of perpetrating fraud. Where a parent (foreign) corporation and a subsidiary thereof act as one in the transaction of business, the former cannot avoid liability under its contract on the ground of its assignment to the latter. *Wilson v. Milner Hotels, Inc.*, 116 M 424, 433, 154 P 2d 265.

Operation and Effect

When a corporation has been regularly brought into existence, it is not deprived of the right to exercise corporate functions by the failure of the directors, designated by the statute, to perfect the organization by taking steps subsequent to the issuance of the certificate by the secretary of state. *Daily v. Marshall*, 47 M 377, 395, 133 P 681.

Id. After a corporation has come into existence by virtue of a statute relative

to the formation of corporations, failure to observe the requirements of other statutes, though rendering the corporate franchise subject to forfeiture under section 15-808 by affirmative action by the state, does not ipso facto work a dissolution of it, or lay its corporate capacity open to attack by a private citizen in a controversy between him and the corporation.

After a corporation has been lawfully organized, it continues to exist until its life expires by limitation, or it has been dissolved by one of the methods prescribed by section 15-1101. *Barnes v. Smith*, 48 M 309, 316, 137 P 541.

The allegation that plaintiff was duly incorporated under the laws of the state by the subscribers to the subscription contract in pursuance of the terms thereof was not a sufficient averment that all the conditions of the contract had been fulfilled. *Enterprise Sheet Metal Works v. Schendel*, 55 M 42, 50, 173 P 1059.

This section authorizes the formation of a corporation to own and operate a street-railway. *Central Trust Co. v. Warren*, 121 Fed 323, 325.

Stockholders' Meetings Not Statutory Requirement for Organization of Business Corporation

The holding of a stockholders' meeting is not one of the requirements made by this section for organizing business corporations, nor does the failure to hold such meetings within the state, constitute, under section 15-1101, an automatic dissolution of the corporation, without refer-

ence to the question whether it would justify a direct proceeding for dissolution. *Golden Rod Mining Co. v. Bukvich*, 108 M 569, 579, 92 P 2d 316.

References

Cited or applied as section 446, Fifth Division Compiled Statutes of 1887, in *Manhattan Trust Co. v. Davis*, 23 M 273, 282, 58 P 718; as section 411, Civil Code, before amendment, in *MacGinnis v. B. & M. C. C. & S. M. Co.*, 29 M 428, 460, 75 P 89; as section 3825, Revised Codes, as amended, in *Merges v. Altenbrand*, 45 M 355, 363, 123 P 21; *Barnett Iron Works, Inc. v. Harmon*, 87 M 38, 42, 285 P 191;

Dunham v. Natural Bridge Ranch Co., 115 M 579, 583, 147 P 2d 902.

Collateral References

Corporations—13-24.

18 C.J.S. Corporations § 41 et seq.

13 Am. Jur. 188, Corporations, § 39; 23 Am. Jur. 269, Foreign Corporations, § 292.

Effect upon the corporate existence of failure to file certificates in organizing a corporation. 22 ALR 376.

Effect of agreement by foreign corporation to service or repair articles sold or leased by it to bring transaction within state control. 126 ALR 1104.

15-112. (5909) Filing of articles of incorporation in county where corporation holds real estate. Any corporation which purchases or holds real estate in any county in this state shall file a duly authenticated copy of its charter or articles of incorporation, or a copy of the copy of its articles of incorporation filed in the office of the secretary of state of Montana, duly certified by such secretary of state, in the office of the county clerk of each such county, within ninety days after real estate is purchased or otherwise acquired therein, provided such articles have not already been filed. The copies so filed with the several county clerks and certified copies thereof, shall have the same force and effect in evidence as would the originals. Any corporation failing to comply with the provisions of this section shall not maintain or defend any action or proceeding in relation to real estate, or the rents, issues, or profits thereof, located in any county where such corporation has failed to file a copy of its articles of incorporation until a duly authenticated copy of its articles of incorporation shall have been filed in such county; provided, that all corporations shall be liable in damages for any and all loss that may arise by the failure of such corporation to comply with the provisions of this section, within the time mentioned herein; and provided further, that the said damages may be recovered in an action brought in any court of this state of competent jurisdiction by any party or parties suffering the same. This section shall apply equally to domestic corporations and to foreign corporations licensed to do business in this state and the penalties for noncompliance shall in either case be those herein provided for and none others.

History: En. Sec. 409, Civ. C. 1895; re-en. Sec. 3823, Rev. C. 1907; re-en. Sec. 5909, R. C. M. 1921; amd. Sec. 1, Ch. 114, L. 1929. Cal. Civ. C. Sec. 299a.

Cross-Reference

Fee for filing articles of incorporation, sec. 25-231.

Operation and Effect

Before amendment this section applied to domestic corporations only. *Uihlein v. Caplice Commercial Co.*, 39 M 327, 336, 102 P 564.

Collateral References

Corporations—22.

18 C.J.S. Corporations § 62.

13 Am. Jur. 188, Corporations, § 39; 23 Am. Jur. 269, Foreign Corporations, § 292.

Effect upon the corporate existence of failure to file certificates in organizing a corporation. 22 ALR 376.

Effect of agreement by foreign corporation to service or repair articles sold or leased by it to bring transaction within state control. 126 ALR 1104.

15-113. (5910) Validation of articles of incorporation. Whenever heretofore any corporation, whether formed under the laws of the territory or

state of Montana, or the laws of any other state or territory, has filed in the office of the secretary of the territory or state of Montana, or of the county clerk of any county in said territory or state, or of both, any copy of its articles of incorporation, or charter, or of any statute or statutes creating such corporation or defining its powers, in conformity to the requirements of the laws of Montana then in force, which copy was a true and correct copy of its said articles, or of its said charter, or of said statute or statutes, but such copy or copies were not properly, or at all, certified as true and correct by the legal custodian of the original or originals thereof, such uncertified or defectively certified but true and correct copy or copies are hereby accepted, on behalf of the state of Montana, as a substantial and satisfactory compliance with the requirements of the laws of Montana then in force, and such filings are hereby declared valid and lawful in all respects and for all purposes to the same extent and with the same legal effect as if such true copy or copies had been fully and duly certified, prior to being filed, by the legal custodian of the original or originals thereof; provided, that, before any such corporation shall have the benefits of this act, and before such defective filings shall be cured, as hereby provided, and become operative as lawful filings from the date of the original filing thereof, such corporation shall, within six months from the date of the final passage of this act, file in the office of the secretary of state of the state of Montana, and in such other public office or offices as are now designated by law as the place or places where such documents would now be filed if any such corporation were now for the first time making such filings, a true and correct copy of its said articles, charter, or statute or statutes, and all amendments thereof, duly certified as true and correct and complete copies thereof, duly certified as such by the present lawful and official custodian of the originals thereof.

History: En. Sec. 1, Ch. 115, L. 1911;
re-en. Sec. 5910, R. C. M. 1921.

15-114. (5911) Effect of validation. Whenever any such corporation as is referred to in the preceding section shall have complied with the provisions of said section and made the filings thereby required, said corporations shall be deemed, and is hereby declared, to have fully complied with all of the requirements of the laws of the territory or state of Montana, and of the constitution and laws of the state of Montana, concerning such filings, and is hereby vested with all the rights, privileges, and immunities, which would have been enjoyed by it if it had in all respects complied strictly at the time of its first filings with all of the requirements of the law then in force and applicable thereto; all such rights, privileges, and immunities being hereby conferred as of the date of the first filings of such true but uncertified copies.

History: En. Sec. 2, Ch. 115, L. 1911;
re-en. Sec. 5911, R. C. M. 1921.

Collateral References

Corporations § 25.
18 C.J.S. Corporations § 91.

15-115. (5912) Release from payment of charges and fees—filing fees. Upon complying with the provisions of the two preceding sections, any such corporation shall be and hereby is released from the payment of any fees, or other charges, to the secretary of the state of Montana or to any

county clerk of any county in Montana, which may or might have become due under or by reason of the provisions of any other laws of this state; provided, that, before the acceptance and filing of said new certified copies by the secretary of state, a filing fee of five dollars shall be paid to him by or on behalf of said corporation, and that any county clerk in whose office any such new filings shall be made under the provisions of this act shall likewise require to be paid to him, by or on behalf of said corporation, a filing fee of one dollar.

History: En. Sec. 3, Ch. 115, L. 1911;
re-en. Sec. 5912, R. C. M. 1921.

Collateral References

Corporations 25.
18 C.J.S. Corporations § 91.

15-116. (5913) Certified copy of articles prima facie evidence. A copy of any articles of incorporation filed in pursuance of this chapter, and certified by the secretary of state, must be received in all courts and other places as prima facie evidence of the facts therein stated.

History: En. Sec. 11, p. 27, L. 1867;
re-en. Sec. 11, p. 408, Cod. Stat. 1871;
re-en. Sec. 254, 5th Div. Rev. Stat. 1879;
re-en. Sec. 456, 5th Div. Comp. Stat. 1887;
re-en. Sec. 407, Civ. C. 1895; re-en. Sec. 3821, Rev. C. 1907; re-en. Sec. 5913, R. C. M. 1921. Cal. Civ. C. Sec. 297.

Operation and Effect

Sections 15-117 and 15-118 do not apply to corporations organized prior to 1895. *Billings Realty Co. v. Big Ditch Co.*, 43 M 251, 256, 115 P 828.

Since the year 1895 there has been no provision for the issuance of a certificate to a corporation formed prior thereto, but proof of the existence of such a corporation could be made under prior laws. Sections 15-117 and 15-118 cannot be held to declare the only rule of evidence in a case

involving proof of corporate existence, but apply only to corporations organized since the adoption of the codes. *Billings Realty Co. v. Big Ditch Co.*, 43 M 251, 256, 115 P 828.

Where the records of the secretary of state show that a company has been regularly incorporated and is carrying on business as a corporation, it must be considered at least a corporation *de facto*, and the state alone, by a direct proceeding for that purpose, can challenge its existence or its right to do business in the state. *Sun River S. & L. Co. v. Montana T. & S. Bk.*, 81 M 222, 235, 262 P 1039.

Collateral References

Corporations 32(8).
18 C.J.S. Corporations § 74 et seq.

15-117. (5914) Evidence of corporate existence or capacity. The certificate issued by the secretary of state upon the filing of a certified copy of any articles of incorporation, or a certificate issued by such secretary or state auditor, setting forth that any corporation, domestic or foreign, has filed its articles of incorporation in his office as required by law, shall be admitted in evidence in all courts of this state, and shall be prima facie evidence of the corporate character and capacity of such corporation and of its right to transact business in this state, excepting in an action prosecuted by the state in the nature of a quo warranto proceeding.

History: En. Sec. 1, Ch. 94, L. 1909;
re-en. Sec. 5914, R. C. M. 1921.

Operation and Effect

This section cannot refer to a corporation organized prior to July 1, 1895, for in terms it applies only to institutions of the kind to which certificates of incorporation have been issued, or, what is the same thing, organized since the adoption of the codes. *Billings Realty Co. v. Big Ditch Co.*, 43 M 251, 257, 115 P 828.

This section presumes a corporation with capital subscribed under the condition

precedent implied by the general rule, or in accordance with an agreement had by the subscribers either at the time they made their subscriptions or thereafter. *Enterprise Sheet Metal Works v. Schendel*, 55 M 42, 52, 173 P 1059.

Admission in evidence of a certified copy of the articles of incorporation of a foreign company, though properly certified, was nevertheless erroneous in the absence of a certified copy of the laws of the state of its incorporation showing the mode of incorporation and the proper custodian of the original, where such company

had never complied with the laws of nor was doing business in this state. *Harvey E. Mack Co. v. Ryan*, 80 M 524, 531, 261 P 283.

Where the records of the secretary of state show that a company has been regularly incorporated and is carrying on business as a corporation, it must be considered at least a corporation de facto, and the state alone, by a direct proceed-

ing for that purpose, can challenge its existence or its right to do business in the state. *Sun River S. & L. Co. v. Montana T. & S. Bk.*, 81 M 222, 235, 262 P 1039.

Collateral References

Corporations—32.

18 C.J.S. Corporations § 76.

15-118. (5915) Evidence of corporate character of national banks. The certificate of the comptroller of the currency of the United States issued to any national bank, authorizing it to commence business, or a certificate of such comptroller setting forth that such bank is authorized to transact business, shall be admitted in evidence in all courts of this state, and shall be prima facie evidence of the corporate character and capacity of such bank; provided, however, that this act shall not be so construed as to affect any case now pending in the courts of this state or of the United States.

History: En. Sec. 2, Ch. 94, L. 1909; re-en. Sec. 5915, R. C. M. 1921.

Collateral References

Evidence—334(1).

32 C.J.S. Evidence § 644.

15-119. (5916) Repealed—Chapter 31, Laws of 1947.

15-120. (5916.1) Repealed—Chapter 31, Laws of 1947.

15-121. (5917) Existing corporations not affected. No corporation formed or existing before twelve o'clock noon on the first day of July, A. D. 1895, when this code takes effect, is or shall be in any manner affected by any of the provisions of part IV of division first of the Revised Codes of 1907, except those provisions which specifically mention and are made applicable to corporations formed and existing before said time, or unless such corporations elect to continue their existence under the provisions of this code applicable thereto as provided in the preceding section of this code; but all the laws of the state of Montana in force and applicable to said previously formed and existing corporations at twelve o'clock noon on the said first day of July, A. D. 1895, when this code takes effect, shall continue to apply and govern such previously formed and existing corporations in all respects, as well in relation to their formation and existence as to their operation, management, and all other matters and things contained in said laws and relating and applicable to such corporations, and said laws are repealed subject to the provisions of this section.

History: En. Sec. 401, Civ. C. 1895; amd. Sec. 1, p. 231, L. 1897; re-en. Sec. 3816, Rev. C. 1907; re-en. Sec. 5917, R. C. M. 1921. Cal. Civ. C. Sec. 288.

NOTE.—"Part IV of Division First" referred to above comprised the entire corporation law embraced in the Revised Codes of 1907.

Operation and Effect

Where a mining corporation, organized under the Compiled Statutes of 1887, never elected to do business under the Code of 1895 or subsequent legislation, the powers of its board are determined by the provi-

sions of this section. *Kleinschmidt v. American Min. Co., Ltd.*, 49 M 7, 23, 139 P 785.

References

Cited or applied as section 401, Civil Code, before amendment, in *Menard v. M. C. Ry. Co.*, 22 M 340, 347, 56 P 592; as Session Laws of 1897, p. 231, in *Western Loan & S. Co. v. S. B. A. Co.*, 31 M 448, 451, 78 P 774; as section 3816, Revised Codes, in *Merges v. Altenbrand*, 45 M 355, 362, 123 P 21; State ex rel. *Nagle v. The Leader Co. et al.*, 97 M 586, 591, 37 P 2d 561.

CHAPTER 2

CHANGE IN ORGANIZATION—AMENDMENT OF ARTICLES—
EXTENSION OF LIFE OF CERTAIN CORPORATIONS

- Section 15-201. Amendment of articles of incorporation—purposes.
 15-202. Adoption of resolution.
 15-203. Publication and mailing notice—waiver.
 15-204. Contents of notice.
 15-205. Organization of meeting—voting.
 15-206. Certificate of proceedings—preparation and filing.
 15-207. Amendment, when effective—evidence—pending suits not affected.
 15-208. Issuance of stock certificates.
 15-209. Limitation on extension of term of corporate existence.
 15-210. Amendment of articles of incorporation to allow continual succession authorized.
 15-211. Certificate of action concerning amendment—where filed.
 15-212. Limit decrease of capital stock.
 15-213. Certain existing laws not affected.
 15-214. Decreasing capital stock by cancelling treasury stock—amendment of articles.
 15-215. Extension term of corporate existence.
 15-216. Adoption of resolution by stockholders.
 15-217. Publication and mailing notice—waiver.
 15-218. Contents of notice.
 15-219. Organization of meeting—voting.
 15-220. Certificate of proceedings—preparation and filing.
 15-221. Amendment, when effective—evidence—pending suits not affected.
 15-222. Extension by stockholders—procedure.
 15-223. Extension by trustees or directors—procedure.
 15-224. Repealing clause—proviso—exceptions.
 15-225. Right of continual succession—how exercised.

15-201. (5918) Amendment of articles of incorporation—purposes.

Any corporation heretofore or hereafter organized under any of the laws of the state of Montana, may, in the manner herein provided, amend its articles of incorporation by changing the name, place of business or number of directors, by changing the number, par value, character, class or preference of its shares of capital stock, by increasing or decreasing the capital stock, by changing or extending its powers or business to embrace any power or purpose for which corporations may be organized under the laws of Montana, or by an amendment in respect to any other matter which might lawfully have been originally provided in such articles of incorporation, or is now or may be, by law, provided in original articles of incorporation or in amendments thereto.

History: En. Sec. 1, Ch. 56, L. 1921; re-en. Sec. 5918, R. C. M. 1921; amd. Sec. 1, Ch. 28, L. 1925; amd. Sec. 1, Ch. 38, L. 1931; amd. Sec. 1, Ch. 32, L. 1947. Cal. Civ. C. Sec. 362. (Sections 5918-5929, R. C. M. 1921 superseded secs. 3812-3814, 3826-3828, 3849, 3894 and 3907, Rev. C. 1907, and all acts amendatory thereof; also Ch. 100, L. 1915.)

Operation and Effect

Held, under this case, that chapter 7, Laws of 1931, dealing with the life of corporations, was not impliedly repealed by chapter 38, which amended this section, having to do with the amendment of the articles of incorporation containing, however, inter alia, a provision referring to

the extension of a corporation's existence, there being, under the interpretation adopted, no conflict between the Acts. State ex rel. Nagle v. The Leader Co. et al., 97 M 586, 592, 37 P 2d 561.

References

Barnett Iron Works, Inc. v. Harmon, 87 M 38, 42, 285 P 191.

Collateral References

Corporations \Rightarrow 40.
 18 C.J.S. Corporations § 61.
 13 Am. Jur. 229, Corporations, §§ 86 et seq.

Personal liability of officers or stockholders for debts of corporation which

has made an unauthorized change in its name. 8 ALR 583.

Power to create preferred stock as against existing preferred stock. 44 ALR 72.

Stockholder's privilege as to acquisition of new issue of stock by corporation. 52 ALR 220.

Power of state to amend charter of a private incorporated charity. 62 ALR 573.

Protection of dissenting stockholder upon change of corporate structure affecting his preferential rights. 78 ALR 1118.

Power of corporation to change obligations to stockholders. 105 ALR 1452.

Power of corporation to amend its charter in respect of character or kind of business. 111 ALR 1525.

15-202. (5919) Adoption of resolution. Such amendment shall be made by the adoption of a resolution at any regular or special meeting of the corporation, of which notice shall have been given in the manner hereinafter provided.

History: En. Sec. 2, Ch. 56, L. 1921; re-en. Sec. 5919, R. C. M. 1921. (Sections 5918-5929, R. C. M. 1921, superseded secs. 3812-3814, 3826, 3828, 3849, 3894 and 3907, Rev. C. 1907, and all acts amendatory thereof; also Ch. 100, L. 1915.)

15-203. (5920) Publication and mailing notice—waiver. Written or printed notice of such meeting must be deposited in the post office addressed to each stockholder of record of said corporation entitled to vote at such meeting under the articles of incorporation, or amendments thereto, and the laws and constitution of Montana, at his usual or last known place of residence, at least thirty (30) days previous to the date set for the holding of such meeting; in addition said notice must be published once a week for four (4) successive weeks in a daily or weekly newspaper published in the county wherein the principal place of business of such corporation is situated. If no newspaper is published in said county, it shall not be necessary to publish said notice. In case the holders of two-thirds ($\frac{2}{3}$) of the stock of such corporation outstanding and entitled to vote as aforesaid, including such proportion of each or any class of stock as may be required by the original or amended articles of incorporation, or two-thirds ($\frac{2}{3}$) of the members, in case such corporation has no capital stock, shall file in the office of such corporation their written consent to the proposed amendment, publication of such notice shall not be necessary.

History: En. Sec. 3, Ch. 56, L. 1921; re-en. Sec. 5920, R. C. M. 1921; amd. Sec. 2, Ch. 38, L. 1931. (Secs. 5918-5929, R. C. M. 1921, superseded secs. 3812-3814, 3826-3828, 3849, 3894 and 3907, Rev. C. 1907, and all acts amendatory thereof; also Ch. 100, L. 1915.)

References

State ex rel. Nagle v. The Leader Co. et al., 97 M 586, 592, 37 P 2d 561.

15-204. (5921) Contents of notice. Said notice shall state the time and place of said meeting, shall distinctly specify the purpose thereof, and shall specifically state the proposed change of name, if any; the place from which and to which it is proposed to change its principal place of business, if any; the proposed increase or decrease in the number of its trustees or directors, if any, provided, however, that the number thereof shall at no time be less than three nor more than thirteen; the proposed change in the number, par value, character, class or preference of the shares of capital stock, if any; the extent of the proposed increase or decrease of the amount of capital stock, if any; the proposed change or extension of the business of such corporation, if any; the length of the proposed extension of the

term of existence of such corporation, if any; and a specific statement of the nature of any other proposed amendment.

History: En. Sec. 4, Ch. 56, L. 1921; 3812-3814, 3826-3828, 3849, 3894 and 3907, re-en. Sec. 5921, R. C. M. 1921. (Secs. Rev. C. 1907, and all acts amendatory thereof; also Ch. 100, L. 1915.)

15-205. (5922) Organization of meeting—voting. If at the time and place of said meeting, as specified in said notice, stockholders of said corporation shall appear in person or by proxy in number representing a majority of the capital stock of the corporation outstanding and entitled to vote under the articles of incorporation, or amendments thereto, and the laws and constitution of Montana, including such proportion of each or any class of stock, as may be required by the original or amended articles of incorporation, or a majority of the members, in case such corporation has no capital stock, the meeting shall organize by choosing a chairman and secretary and the meeting shall then proceed to vote upon the matter or matters proposed in said notice.

History: En. Sec. 5, Ch. 56, L. 1921; re-en. Sec. 5922, R. C. M. 1921; amd. Sec. 3, Ch. 38, L. 1931; amd. Sec. 1, Ch. 13, L. 1955. (Secs. 5918-5929, R. C. M. 1921, superseded secs. 3812-3814, 3826-3828, 3849, 3894 and 3907, Rev. C. 1907, and all acts amendatory thereof; also Ch. 100, L. 1915.)

References

State v. Letterman, 88 M 244, 252, 292 P 717; State ex rel. Nagle v. The Leader Co. et al., 97 M 586, 592, 37 P 2d 561.

15-206. (5923) Certificate of proceedings—preparation and filing. If, on canvassing the votes, it shall appear that at least a majority of the capital stock of such corporation outstanding and entitled to vote under the articles of incorporation, or amendments thereto, and the laws and constitution of Montana, including such proportion of each or any class of stock, as may be required by the original or amended articles of incorporation, or a majority of the members, in case such corporation has no capital stock, have voted in favor of the proposition submitted, a certificate of the proceedings showing in all cases a compliance with the provisions of this act, containing a copy of the resolution adopted and showing the vote thereon, and the number of shares of stock of each class voted thereon, shall be made out, signed and verified by the affidavit of the chairman of such meeting, and countersigned by the secretary of the meeting, and shall be filed in the office of the county clerk of the county where the original articles of incorporation of such corporation were filed, and a copy thereof, certified by such county clerk shall be filed in the office of the secretary of state. A copy of such certificate shall likewise be filed in the office of the county clerk and recorder of any county to which said corporation may have changed its place of business.

History: En. Sec. 6, Ch. 56, L. 1921; re-en. Sec. 5923, R. C. M. 1921; amd. Sec. 4, Ch. 38, L. 1931; amd. Sec. 2, Ch. 13, L. 1955. (Secs. 5918-5929, R. C. M. 1921, superseded secs. 3812-3814, 3826-3828, 3849, 3894 and 3907, Rev. C. 1907, and all acts amendatory thereof; also Ch. 100, L. 1915.)

References

State ex rel. Nagle v. The Leader Co. et al., 97 M 586, 592, 37 P 2d 561.

Collateral References

Extension or renewal of period of corporate existence. 108 ALR 59.

15-207. (5924) Amendment, when effective—evidence—pending suits not affected. Upon the filing of such certificate in the office of the secretary of state in the manner provided in the preceding section, the designated amendment shall immediately become effective. A copy of such certificate, duly certified by the secretary of state, shall be prima facie evidence of the facts therein stated, and shall be received as such evidence in all courts of the state. No amendment shall affect any cause of action in favor of or against such corporation nor any pending suit in which such corporation shall be a party, nor shall the rights of any person be in any way prejudiced thereby, nor shall suits brought against such corporation by its former name be abated for that cause.

History: En. Sec. 7, Ch. 56, L. 1921; re-en. Sec. 5924, R. C. M. 1921. (Secs. 5918-5929, R. C. M. 1921, superseded secs. 3812-3814, 3826-3828, 3849, 3894 and 3907, Rev. C. 1907, and all acts amendatory thereof; also Ch. 100, L. 1915.)

Collateral References

Corporations⇒40 et seq.; Evidence⇒334(1).
18 C.J.S. Corporations § 61; 32 C.J.S. Evidence § 644.

15-208. (5925) Issuance of stock certificates. Whenever by reason of any change in the number or par value of the shares of stock any stockholder shall be entitled to a new or different stock certificate, it shall be the duty of the corporation to promptly issue such certificate upon the surrender of the original stock certificate held by such stockholder.

History: En. Sec. 8, Ch. 56, L. 1921; re-en. Sec. 5925, R. C. M. 1921. (Secs. 5918-5929, R. C. M. 1921, superseded secs. 3812-3814, 3826-3828, 3849, 3894 and 3907, Rev. C. 1907, and all acts amendatory thereof; also Ch. 100, L. 1915.)

Collateral References

Corporations⇒127.
18 C.J.S. Corporations § 396.
Issuance by corporation of new stock certificates without requiring surrender of old. 150 ALR 148.

15-209. (5926) Limitation on extension of term of corporate existence. Any corporation organized under the laws of the territory or state of Montana, whether organized previous to or after the taking effect of the codes on July 1, 1895, shall have power to extend the term of its existence, in the manner provided by law, for consecutive periods of not to exceed forty years each; provided, that at the time of any such extension the unexpired portion of its then authorized term of existence plus the term of the proposed extension shall not exceed forty years and sixty days; and provided further that nothing herein shall limit the existence of any corporation that may be by law permitted continual existence; and, provided further, that the state reserves the right to at any time alter, revoke or amend the powers and privileges herein granted to corporations.

History: En. Sec. 9, Ch. 56, L. 1921; re-en. Sec. 5926, R. C. M. 1921; amd. Sec. 2, Ch. 28, L. 1925. (Secs. 5918-5929, R. C. M. 1921, superseded secs. 3812-3814, 3826-3828, 3849, 3894 and 3907, Rev. C. 1907, and all acts amendatory thereof; also Ch. 100, L. 1915.)

Collateral References

Corporations⇒37.
18 C.J.S. Corporations § 79.
13 Am. Jur. 228, Corporations, § 85.
Extension or renewal of period of corporate existence. 108 ALR 59.

15-210. (5926.1) Amendment of articles of incorporation to allow continual succession authorized. Any corporation organized under the laws of the territory or state of Montana, which was on the 5th day of March, 1903, subject to the provisions of Sections 860, 861, 862, 863 and 865 of the Civil Code of Montana of 1895, is hereby authorized to amend its articles of

incorporation so as to hereafter have and enjoy the privilege of continual succession conferred upon corporations thereafter organized under the provisions of the Act approved March 5, 1903, (Laws of Montana 1903, Chapter LXX, entitled: "An Act to Amend Sections 860, 861, 862, 863 and 865 of the Civil Code, Relating to Religious, Social and Benevolent Corporations"—sections 15-1401 to 15-1406 of this code), or under laws amendatory thereof or supplemental thereto, by resolution to that effect, adopted (a) at any regular annual meeting of the members of the corporation, or (b) at any special meeting of the members regularly called for the purpose by the directors or governing committee, or (c) at any meeting of the directors or governing committee upon the written consent of the majority of the members of the corporation; provided, that such resolution is adopted prior to the expiration of the period of forty years from and after the date of the filing of the original articles of incorporation. The resolution of amendment may be adopted at a meeting of the members upon the affirmative vote of a majority of the members then present, provided that a quorum of the members, as defined by the constitution or by-laws of the corporation, are present.

History: En. Sec. 1, Ch. 27, L. 1925.

Collateral References

Corporations⊕40.

18 C.J.S. Corporations § 61.

15-211. (5926.2) Certificate of action concerning amendment—where filed. A certificate of the action of the directors or governing committee, signed by them and their secretary, when the resolution is adopted upon the written consent of the members, or a certificate of the proceedings of the meeting of the members, when the resolution is adopted at such meeting, signed by the chairman and secretary of the meeting and a majority of the directors, shall be filed in the office of the clerk of the county wherein the original articles of incorporation are filed, and a certified copy thereof in the office of the secretary of state; and thereafter, the corporation shall have continual succession, under the provisions of the Act of March 5, 1903, (Laws of Montana 1903, Chapter LXX), and laws amendatory thereof or supplemental thereto, which may be applicable thereto, and shall possess all the rights and powers, and be subject to all the obligations, restrictions and limitations prescribed thereby.

History: En. Sec. 2, Ch. 27, L. 1925.

Collateral References

Corporations⊕40.

18 C.J.S. Corporations § 61.

15-212. (5927) Limit decrease of capital stock. No corporation shall diminish its capital stock to an amount less than its total indebtedness.

History: En. Sec. 10, Ch. 56, L. 1921; re-en. Sec. 5927, R. C. M. 1921. (Secs. 5918-5929, R. C. M. 1921, superseded secs. 3812-3814, 3826-3828, 3849, 3894 and 3907, Rev. C. 1907, and all acts amendatory thereof; also Ch. 100, L. 1915.)

Collateral References

Corporations⊕67.

18 C.J.S. Corporations § 268.

15-213. (5928) Certain existing laws not affected. Nothing herein contained shall be deemed to affect the provisions of section 93-100-2 of this code, relating to the change of name of certain corporations by action of the district court, but the procedure specified in said section shall be cumula-

tive and additional to that herein provided as to all corporations designated in said section 93-100-2. Nothing herein contained shall be construed to change or amend the existing laws requiring approval of amendments to articles of incorporation of insurance or other corporations, by the state auditor or commissioner of insurance, nor shall this act apply to banks, trust, or investment companies in any case where procedure other than or different from that herein contained is prescribed by the bank act of this state governing such companies.

History: En. Sec. 11, Ch. 56, L. 1921; re-en. Sec. 5928, R. C. M. 1921. (Secs. 5918-5929, R. C. M. 1921, superseded secs. 3812-3814, 3826-3828, 3849, 3894 and 3907, Rev. C. 1907, and all acts amendatory thereof; also Ch. 100, L. 1915.)

Collateral References

Corporations 47.
18 C.J.S. Corporations § 171.

15-214. Decreasing capital stock by cancelling treasury stock—amendment of articles. (1) Any corporation organized under any of the laws of the state of Montana heretofore or hereafter, whether formed and existing before or after taking effect of the codes of July 1, 1895, and which has acquired and holds in its treasury any shares of its capital stock theretofore issued, may in the manner herein provided amend its articles of incorporation by decreasing its authorized and issued capital stock by canceling all or any part of the shares so held in its treasury and reducing the amount of its authorized and issued capital stock by the amount of the par value of the shares so canceled, and, in case the shares to be canceled are shares without any nominal or par value, the capital of the corporation shall be reduced by the amount of capital represented by such shares without nominal or par value; provided that no such decrease in capital stock shall be made if the capital stock of the corporation is reduced below an amount less than its total indebtedness.

(2) Such decrease of the authorized and issued capital stock of a corporation may be effected by filing with the clerk of the county where the original articles of incorporation of such corporation were filed a certificate signed by a majority of the directors or trustees of such corporation, setting forth the number of shares of capital stock so held in the treasury of the corporation, the par value, if any, thereof, or, in case of shares without nominal or par value, the amount of capital represented by such shares, and the amount of the shares so held in the treasury which are to be so canceled, and the amount of decrease to be effected in the authorized and issued capital stock of such corporation. A certified copy of such certificate must be filed in the office of the secretary of state, and if the principal place of business of such corporation has been changed a certified copy thereof must be filed in the office of the clerk of the county to which such principal place of business has been changed.

History: En. Sec. 1, Ch. 53, L. 1941.

15-215. Extension term of corporate existence. When the term of years for which any private corporation heretofore or hereafter organized under any law of the state or territory of Montana, was incorporated, or its extended term of corporate existence has expired or is about to expire, and said corporation is carrying on the business for which it was incorporated, and has not been administered upon as an expired corporation, or gone into

liquidation or had any settlement of its affairs, the term of existence of said corporation may be extended within the limits provided by law by amendment to its articles of incorporation in any of the following ways.

History: En. Sec. 1, Ch. 31, L. 1947.

18 C.J.S. Corporations § 79; 19 C.J.S. Corporations § 1575.

Cross-Reference

Extension of existence of foreign corporations, sec. 15-1713.

13 Am. Jur. 228, Corporations, § 85.

Extension or renewal of period of corporate existence, 108 ALR 59.

Collateral References

Corporations 37, 571.

15-216. Adoption of resolution by stockholders. At any regular or special meeting of the stockholders or members of any corporation specified in section 15-215, called and noticed in the manner designated in sections 15-217 and 15-218, a resolution may be adopted amending the articles of incorporation of such corporation by extending its corporate existence within the limits provided by section 15-209, after notice given as follows.

History: En. Sec. 2, Ch. 31, L. 1947.

15-217. Publication and mailing notice—waiver. Written or printed notice of such meeting must be deposited in the post office addressed to each stockholder of record of said corporation entitled to vote at such meeting under the articles of incorporation, or amendments thereto, and the laws and constitution of Montana, at his usual or last known place of residence, at least thirty (30) days previous to the date set for the holding of such meeting; in addition said notice must be published once a week for four (4) successive weeks in a daily or weekly newspaper published in the county wherein the principal place of business of such corporation is situated. If no newspaper is published in said county, it shall not be necessary to publish said notice. In case the holders of two-thirds ($\frac{2}{3}$) of the stock of such corporation outstanding and entitled to vote as aforesaid, including such proportion of each or any class of stock as may be required by the original or amended articles of incorporation, or two-thirds ($\frac{2}{3}$) of the members, in case such corporation has no capital stock, shall file in the office of such corporation their written consent to the proposed amendment, publication of such notice shall not be necessary.

History: En. Sec. 3, Ch. 31, L. 1947.

15-218. Contents of notice. The notice specified in the preceding section shall state the time and place of said meeting, shall distinctly specify the purpose thereof and shall state the length of the proposed extension of the term of existence of said corporation.

History: En. Sec. 4, Ch. 31, L. 1947.

15-219. Organization of meeting—voting. If at the time and place of said meeting, as specified in said notice, stockholders of said corporation shall appear in person or by proxy in number representing not less than two-thirds ($\frac{2}{3}$) of the capital stock of the corporation outstanding and entitled to vote under the articles of incorporation or amendments thereto, and the laws and constitution of Montana, including such proportion of each or any class of stock, as may be required by the original or amended articles of incorporation, or two-thirds ($\frac{2}{3}$) of the members, in case such corporation

has no capital stock, the meeting shall organize by choosing a chairman and secretary and the meeting shall then proceed to vote upon the matter or matters proposed in said notice.

History: En. Sec. 5, Ch. 31, L. 1947.

15-220. Certificate of proceedings—preparation and filing. If, on canvassing the votes, it shall appear that at least two-thirds ($\frac{2}{3}$) of the capital stock of such corporation outstanding and entitled to vote under the articles of incorporation, or amendments thereto, and the laws and constitution of Montana, including such proportion of each or any class of stock, as may be required by the original or amended articles of incorporation, or two-thirds ($\frac{2}{3}$) of the members, in case such corporation has no capital stock have voted in favor of the proposition submitted, a certificate of the proceedings showing in all cases a compliance with the provisions of this act, containing a copy of the resolution adopted and showing the vote thereon, and the number of shares of stock of each class voted thereon, shall be made out, signed and verified by the affidavit of the chairman of such meeting, and countersigned by the secretary of the meeting, and shall be filed in the office of the county clerk of the county where the original articles of incorporation of such corporation were filed, and a copy thereof, certified by such county clerk shall be filed in the office of the secretary of state. A copy of such certificate shall likewise be filed in the office of the county clerk and recorder of any county to which said corporation may have changed its place of business.

History: En. Sec. 6, Ch. 31, L. 1947.

15-221. Amendment, when effective—evidence—pending suits not affected. Upon the filing of such certificate in the office of the secretary of state in the manner provided in the preceding section, the designated amendment shall immediately become effective. A copy of such certificate, duly certified by the secretary of state, shall be prima facie evidence of the facts therein stated, and shall be received as such evidence in all courts of the state. No amendment shall affect any cause of action in favor of or against such corporation nor any pending suit in which such corporation shall be a party, nor shall the rights of any person be in any way prejudiced thereby, nor shall suits brought against such corporation by its former name be abated for that cause.

History: En. Sec. 7, Ch. 31, L. 1947.

15-222. Extension by stockholders—procedure. In addition to the extension of the term of corporate existence by vote of the stockholders or members of a corporation after notice as provided in this act, such extension may be made by the trustees or directors of any corporation specified in section 15-215 in the following manner. At any regular annual meeting of such corporation held at the time and place prescribed by its by-laws for the election of directors, at which meeting a quorum as defined by section 15-504, is present, or at any special meeting of the stockholders or members of such corporation called, noticed and held for that specific purpose, in the manner prescribed by its by-laws, and at which a quorum as defined by said section 15-504, is present, a resolution extending the term of its corporate existence may be adopted by not less than a two-thirds ($\frac{2}{3}$) vote of the

capital stock of such corporation present and entitled to vote. Thereafter a certificate of such proceedings shall be prepared and filed in the manner specified in section 15-220 and shall have the same effect as declared by section 15-221.

History: En. Sec. 8, Ch. 31, L. 1947.

15-223. Extension by trustees or directors—procedure. In addition to the methods of extending corporate existence here above specified, the board of directors or trustees of any corporation described in section 15-215 may (unless prohibited by a resolution approved by a majority vote of the outstanding capital stock of such corporation entitled to vote), adopt a resolution by vote of not less than two-thirds ($\frac{2}{3}$) of the members of such board present at any meeting of said board whether regular or special, noticed and held at the time and place and in the manner provided by the by-laws of such corporation for the holding of trustees or directors meetings extending the term of existence of such corporation for a specified period within the limits provided by law. A certificate of the proceedings had at such meeting showing in all cases a compliance with the provisions of this act, containing a copy of the resolutions adopted and showing the vote thereon shall be made out, signed by the chairman and secretary of the meeting and at least two-thirds ($\frac{2}{3}$) of the members of the board of directors or trustees. The seal of the corporation shall be affixed thereto and attested by the proper officer of said corporation. Such certificate shall be filed in the office of the county clerk of the county wherein the original articles of incorporation were filed and a copy thereof, certified by such county clerk, shall be filed in the office of the secretary of state. Upon the filing of such certificate and certified copy thereof, as hereinabove provided, the term of existence of such corporation shall thereupon be extended for the term and period expressed in said resolution and certificate. If such corporation has changed its principal office and place of business to another county in this state a similar certified copy shall likewise be filed in the office of the county clerk of such county.

History: En. Sec. 9, Ch. 31, L. 1947.

15-224. Repealing clause—proviso—exceptions. Section 5916, section 5916.1, section 5917.1 to section 5917.4 inclusive, R. C. M. 1935, chapter 32 of the session laws of Montana of 1937, and chapter 127 of the session laws of Montana of 1943, and all other acts and parts of acts in conflict herewith, be, and they are hereby repealed, provided however that said repeals shall in no way affect any rights heretofore accrued or any extension of corporation existence heretofore made under any of said repealed enactments. Nothing in this act contained shall be deemed to prevent any corporation now or hereafter entitled to perpetual succession from availing itself of that right in the manner provided by law.

History: En. Secs. 10, 11, Ch. 31, L. 1947.

15-225. Right of continual succession—how exercised. Corporations and water users' associations heretofore or hereafter organized under the laws of the state of Montana for the purpose of acquiring and owning water rights and constructing, maintaining and operating canals, ditches, flumes

and other works for conveying water, and reservoirs for storing the same, or for any of the purposes mentioned in this section, shall have continual existence, and may amend their articles of incorporation to provide for continual existence, by pursuing any of the methods now or hereafter provided by law for amendment of articles of incorporation of corporations.

History: En. Sec. 1, Ch. 185, L. 1937;
amd. Sec. 1, Ch. 34, L. 1947.

CHAPTER 3

BY-LAWS

Section 15-301. By-laws, adoption of—when, how and by whom.

15-302. By-laws—may provide for what.

15-303. By-laws, recording and amendment of.

15-301. (5930) By-laws, adoption of—when, how and by whom. Every corporation formed under this title must, within one month after filing articles of incorporation, adopt a code of by-laws for its government, not inconsistent with the constitution and laws of this state. The assent of stockholders representing a majority of all the subscribed capital stock, or a majority of the members, if there be no capital stock, is necessary to adopt by-laws, if they are adopted at a meeting called for that purpose; and in the event of such meeting being called, two weeks' notice of the same by advertisement in some newspaper published in the county in which the principal place of business of the corporation is located, or if none is published therein, then in a paper published in an adjoining county, must be given by order of the acting president. The written assent of the holders of two-thirds of the stock, or of two-thirds of the members, if there be no capital stock, shall be effectual to adopt a code of by-laws without a meeting for that purpose.

History: En. Sec. 430, Civ. C. 1895; re-en. Sec. 3829, Rev. C. 1907; re-en. Sec. 5930, R. C. M. 1921. Cal. Civ. C. Sec. 301.

NOTE.—The "title" referred to above embraced sections 3805 to 3908, Revised Codes 1907; 15-101 to 15-1202 of this code.

References

Cited or applied as section 430, Civil Code, in *Smith v. Iron Mountain Tunnel Co.*, 46 M 13, 17, 125 P 649; as section

3829, Revised Codes, in *Daily v. Marshall*, 47 M 377, 391, 133 P 681; *Enterprise Sheet Metal Works v. Schendel*, 55 M 42, 52, 173 P 1059; *Alley v. Butte & Western Min. Co.*, 77 M 477, 491, 251 P 517.

Collateral References

Corporations \S 56.

18 C.J.S. Corporations \S 187.

13 Am. Jur. 283, Corporations, $\S\S$ 151-165.

15-302. (5931) By-laws—may provide for what. A corporation may, by its by-laws, where no other provision is specially made, provide for:

1. The time, place, and manner of calling and conducting its meetings;
2. The number of stockholders or members constituting a quorum;
3. The mode of voting by proxy;
4. The time of the annual election of directors, and the mode and manner of giving notice thereof;
5. The compensation and duties of officers;

6. The manner of election and the tenure of office of all officers other than the directors; and,

7. Suitable penalties for violations of by-laws, not exceeding, in any case, one hundred dollars for any one offense.

History: En. Sec. 432, Civ. C. 1895; re-en. Sec. 3831, Rev. C. 1907; re-en. Sec. 5931, R. C. M. 1921. Cal. Civ. C. Sec. 303.

References

Aetna C. & S. Co. v. American B. Co., 63 M 474, 479, 208 P 921; Alley v. Butte & Western Min. Co., 77 M 477, 491, 251 P 517.

Collateral References

Corporations—55.

18 C.J.S. Corporations § 186.

By-law of corporation authorizing removal of officer, agent or employee at any

time, as affecting contract of employment for a specified period. 145 ALR 312.

Enforceability of invalid corporate by-law as contract. 159 ALR 290.

Restricting sale or transfer of stock, construction and implication of provisions of by-laws, providing for. 2 ALR 2d 754, 760, 764.

Power of president of corporation to have litigation instituted by it where board of directors has failed or refused to grant permission, as affected by by-laws. 10 ALR 2d 713.

15-303. (5932) By-laws, recording and amendment of. All by-laws adopted must be certified by a majority of the directors and secretary of the corporation, and printed, typewritten, photographed, or copied in a legible hand, in some book kept in the office of the corporation, to be known as the "book of by-laws," and no by-law shall take effect until so copied, and the book shall then be open to the inspection of the public during the office hours of each day except holidays. The by-laws may be repealed or amended, or new by-laws may be adopted, at the annual meeting, or any other meeting of the stockholders or members, called for that purpose by the directors, by a vote representing two-thirds of the subscribed stock, or by two-thirds of the members. The written assent of the holders of two-thirds of the stock, or two-thirds of the members if there is no capital stock, shall be effectual to repeal or amend any by-law, or to adopt additional by-laws. The power to repeal and amend the by-laws and adopt new by-laws, may, by a similar vote at any such meeting, or similar written assent, be delegated to the board of directors. The power, when delegated, may be revoked, by a similar vote, at any regular meeting of the stockholders or members. Whenever any amendment or new by-law is adopted, it shall be so printed, typewritten, photographed or copied in the book of by-laws with the original by-laws, and immediately after them, and shall not take effect until so printed, typewritten, photographed or copied. If any by-laws be repealed, the fact of repeal, with the date of the meeting at which the repeal was enacted, or written consent was filed, shall be stated in said book, and until so stated the repeal shall not take effect. All by-laws heretofore adopted and certified by a majority of the directors and secretary of the corporation and printed, typewritten, photographed or copied in a legible hand in the "book of by-laws" of said corporation and any amendment thereto or any repeal thereof made in the manner required by law and so printed, typewritten, photographed or copied, shall be given full force and effect from the date they were so printed, typewritten, photographed or copied.

History: En. Sec. 433, Civ. C. 1895; re-en. Sec. 3832, Rev. C. 1907; re-en. Sec. 5932, R. C. M. 1921; amd. Sec. 1, Ch. 111, L. 1949. Cal. Civ. C. Sec. 304.

References

Cited or applied as section 433, Civil Code, in Smith v. Iron Mountain Tunnel

Co., 46 M 13, 17, 125 P 649; as section 3832, Revised Codes, in *Daily v. Marshall*, 47 M 377, 391, 133 P 681; *Aetna C. & S. Co. v. American B. Co.*, 63 M 474, 482, 208 P 921.

Collateral References

Corporations \hookrightarrow 56.
18 C.J.S. Corporations § 188.

CHAPTER 4

DIRECTORS

- Section 15-401. Corporate powers and business exercised by board of directors—number and membership of board—quorum.
15-402. Classification of directors as to term of office.
15-403. Directors, election of.
15-404. Directors must be elected or provided for at meeting at which by-laws are adopted.
15-405. Election of directors—how conducted.
15-406. Organization of board of directors, etc.
15-407. Corporate dividends payable out of net assets or net profit—reserve.
15-408. Removal of directors.
15-409. Resignation of directors or officers of corporations.
15-410. False certificate, report or notice—officers liable.
15-411. Insurance on directors' lives.
15-412. Indemnification of directors and officers for liabilities and expenses incurred by them in connection with the defense of certain suits.

15-401. (5933) Corporate powers and business exercised by board of directors—number and membership of board—quorum. The corporate powers, business, and property of all corporations formed under this title must be exercised, conducted and controlled by a board of not less than three nor more than thirteen directors, to be elected from among the holders of stock, or where there is no capital stock, then from the members of such corporations. Directors of corporations for profit must be holders of stock therein in an amount to be fixed by the by-laws of the corporation, except those named in the articles of incorporation for the first three months, who shall be directors until their successors are elected and qualified. Directors of all other corporations must be members thereof. Unless a quorum is present and acting, no business performed or act done is valid as against the corporation. Whenever a vacancy occurs in the office of director, unless the by-laws of the corporation otherwise provide, such vacancy must be filled by an appointee of the board.

History: En. Sec. 434, Civ. C. 1895; re-en. Sec. 3833, Rev. C. 1907; re-en. Sec. 5933, R. C. M. 1921. Cal. Civ. C. Sec. 305.

Cross-References

Criminal liability of directors, secs. 94-2313, 94-2314.

Officers or stockholders may notarize papers, sec. 56-106.

Admission of One Director Not Binding

The directors of a corporation act for it only as a body, and therefore admissions or declarations of an individual director are not binding upon it unless authority to make them was duly conferred. *Raish v. Orchard Canal Co.*, 67 M 140, 144, 218 P 655.

Directors Governing Body

The board of directors of a corporation, and not its stockholders, conducts and controls its business and property, so long as it acts in the manner prescribed by law. *Pioneer M. Corp. v. Larabie Bros. Bankers*, 99 M 358, 363, 43 P 2d 884.

Duty of Directors Generally

While it is entirely competent for the directors to manage and conduct the business of the corporation through duly authorized agents, the directors themselves are the agents ultimately responsible. They, therefore, cannot abdicate their duties nor permit others to act in their stead for the corporation or the stockholders.

Deschamps v. Loisel, 50 M 565, 572, 148 P 335.

Liability On Contracts

A corporation cannot be held liable for preliminary contracts made by its promoters authorized by a majority of its incorporators or stockholders, but is only bound on such contracts as are made by its board of directors acting within the scope of their powers or by ministerial officers empowered to make them. *Kirkup v. Anaconda Amusement Co.*, 59 M 469, 482, 197 P 1005.

Power to Sell Assets

Under the common-law powers reserved to corporations by the proviso in section 15-901 et seq., and enumerated in a general way in this section and section 15-801, the board of directors of a going corporation could, in the proper pursuit of its business and within the purposes of its creation, against the dissent of a minority of its stockholders, sell a leasehold interest in realty with improvements thereon, and where such sale was made before plaintiffs had judgment against the selling corporation, they acquired no title under execution sale, and nonsuit was properly granted in their action in ejectment against the purchaser. *Wortman v. Luna Park Amusement Co.*, 61 M 89, 97, 98, 201 P 570.

In the absence of statute expressly so providing, the directors of a solvent corporation have no authority to dispose of accumulated property except in furtherance and in the ordinary course of its business; corporations have no power to make gifts ultra vires. *Hanrahan v. Andersen*, 108 M 218, 224, 90 P 2d 494.

Qualification of Director

Upon the assumption that the sale of his stock in a corporation ipso facto vacated the office of the seller as a director, such result did not follow where, at the time of a special meeting of the board, negotiations for the sale, though pending, were not completed. *O'Rourke v. Grand Opera House Co.*, 47 M 459, 467, 133 P 965.

In requiring the directors of a corporation having capital stock to be stockholders, the legislature intended that the directors should be bona fide owners of stock. The result of the requirement is that, when the capital stock passes into the hands of a single person, the entity of the corporation, except so far as it is necessary to protect the rights of strangers, who deal with it through its ostensible officers and agents, is entirely in abeyance, and its functions for the time being cease. *Barnes v. Smith*, 48 M 309, 318, 137 P 541.

The provision of the law which requires

that "directors of corporations for profit must be holders of stock therein in an amount to be fixed by the by-laws of the corporation" (this section) unquestionably contemplates that the directors shall be bona fide holders of the qualifying stock. *Barnes v. Smith*, 48 M 309, 137 P 541; *Scott v. Prescott*, 69 M 540, 223 P 490; *Sun River S. & L. Co. v. Montana T. & S. Bk.*, 81 M 222, 241, 262 P 1039.

To render one eligible to the office of a director of a private corporation, his name must, under this section, appear on its books as one of its stockholders, and, under section 15-504, if his name does not so appear thereon ten days prior to an election of directors, he cannot vote at such election. *Gillies v. Robert E. Lee Mining Co.*, 78 M 402, 412, 254 P 422.

Ratification of Directors When Presumed

The action of the stockholders of a corporation, at a meeting at which every outstanding share of stock was duly represented and voted in favor of the issuance of a certain number of shares to the promoters of the company in payment for their services, a majority of the directors being present and assenting, will be deemed to have been ratified by the board of directors. *Fitzpatrick v. O'Neill*, 43 M 552, 563, 118 P 273.

When Consent Judgment Against Corporation a Nullity

Where the president of a corporation in the conduct of its affairs disregarded stockholders, directors, officers, by-laws and the statutes, contention that under a resolution adopted at a directors' meeting without a quorum he had a right to compromise actions against the corporation, and that therefor a judgment entered against it with his consent constituted a consent judgment on the part of the corporation the rights of which were not considered in entering it, held without merit, since the corporation could not under such circumstances have consented to it. *Hanrahan v. Andersen*, 108 M 218, 237, 90 P 2d 494.

When Corporate Entity in Abeyance

When the capital stock passes into the hands of a single person, the entity of the corporation, except so far as it is necessary to protect the rights of strangers, who deal with it through its ostensible officers and agents, is entirely in abeyance, and its functions for the time being cease (*Scott v. Prescott*, 69 M 540, 559, 223 P 490, 496, citing numerous authorities). *Commercial Credit Co. v. O'Brien*, 115 M 199, 211, 146 P 2d 637.

References

Cited or applied as section 3883 (erroneously), Revised Codes, in *Edwards v.*

Plains Light & Water Co., 49 M 535, 547, 143 P 962; Aetna C. & S. Co. v. American B. Co., 63 M 474, 479, 208 P 921; Alley v. Butte & Western Min. Co., 77 M 477, 492, 251 P 517; Cobb et al. v. Lee, 80 M 328, 336, 260 P 722; Stanton v. Occidental Life Ins. Co. et al., 81 M 44, 57, 261 P 620; In re Sharp Bros., 2 F Supp 227; Dunham

v. Natural Bridge Ranch Co., 115 M 579, 583, 147 P 2d 902.

Collateral References

Corporations \Rightarrow 281-298.

19 C.J.S. Corporations § 715 et seq.

13 Am. Jur. 852, Corporations, §§ 864 et seq.

15-402. (5934) Classification of directors as to term of office. Any private corporation, now organized and existing, or which may hereafter be organized under the laws of Montana, may, by making provision therefor in its by-laws as originally adopted, or as amended, classify its directors in respect to the time for which they shall severally hold office, the several classes to be elected for different terms; provided, that no class shall be elected for a shorter period than one year, or for a longer period than three years, and that the term of office of at least one class shall expire each year. If the provision for such classification of directors is not made in the by-laws originally adopted, it may be incorporated in such by-laws by amendment, as other amendments to the by-laws may be legally made.

History: En. Sec. 1, Ch. 58, L. 1915; re-en. Sec. 5934, R. C. M. 1921.

Collateral References

Corporations \Rightarrow 291.

19 C.J.S. Corporations § 732.

15-403. (5935) Directors, election of. The directors must be, except as hereinafter provided, elected annually by the stockholders or members, and if no provision is made by the by-laws for the time of election, the election must be held on the first Tuesday in June. Notice of such election must be given, and the right to vote determined as provided in section 15-301, but by so providing in its by-laws as originally adopted, or as the same may be amended, any corporation organized under this act, or heretofore organized under the laws of Montana, may classify its directors in respect to the time for which they shall severally hold office, the several classes to be elected for different terms; provided, that no class shall be elected for a shorter period than one year, or for a longer period than three years, and that the term of office of at least one class shall expire each year.

History: En. Sec. 431, Civ. C. 1895; re-en. Sec. 3830, Rev. C. 1907; amd. Sec. 2, Ch. 58, L. 1915; re-en. Sec. 5935, R. C. M. 1921. Cal. Civ. C. Sec. 302.

ment, and void. Glass v. Basin & Bay State Min. Co., 31 M 21, 31, 77 P 302.

References

Cited or applied as section 3830, Revised Codes, before amendment, in Daily v. Marshall, 47 M 377, 391, 133 P 681.

Collateral References

13 Am. Jur. 543, Corporations, §§ 508 et seq.

Operation and Effect

A contract by which it was agreed that certain persons should be trustees until the business of a mining corporation should be in successful operation was held to be contrary to this section, prior to its amend-

15-404. (5936) Directors must be elected or provided for at meeting at which by-laws are adopted. At the meeting at which the by-laws are adopted, or at such subsequent meeting as may be then designated, directors must be elected, and unless otherwise provided by the by-laws as originally adopted, or as amended, shall hold their offices for one year, and until their successors are elected and qualified.

History: En. Sec. 435, Civ. C. 1895; re-en. Sec. 3834, Rev. C. 1907; amd. Sec. 3,

Ch. 58, L. 1915; re-en. Sec. 5936, R. C. M. 1921.

References

Cited or applied as section 3834, Revised Codes, before amendment, in *Daily v. Marshall*, 47 M 377, 391, 133 P 681.

Collateral References

Corporations \S 283, 291.
19 C.J.S. Corporations $\S\S$ 716, 732.

15-405. (5937) Election of directors—how conducted. All elections must be by ballot, and every stockholder shall have the right to vote in person or by proxy the number of shares standing in his name, as provided in section 15-504 of this code, for as many persons as there are directors to be elected, or to cumulate said shares and give one candidate as many votes as the number of directors multiplied by the number of his shares of stock shall equal, or to distribute them on the same principle among as many candidates as he shall think fit. In corporations having no capital stock, each member of the corporation may cast as many votes for one director as there are directors to be elected, or may distribute the same among any or all of the candidates. In either case the directors receiving the highest number of votes shall be declared elected.

History: En. Sec. 436, Civ. C. 1895; re-en. Sec. 3835, Rev. C. 1907; re-en. Sec. 5937, R. C. M. 1921. Cal. Civ. C. Sec. 307.

Intosh, 47 M 70, 73, 130 P 413. See *Moss v. Goodhart*, 47 M 257, 264, 131 P 1071.

References

Cobb et al. v. Lee, 80 M 328, 337, 260 P 722.

Collateral References

Corporations \S 283(2).
19 C.J.S. Corporations \S 720.

Provision authorizing directors to fill vacancies as applicable to newly created directorships. 6 ALR 2d 174.

Operation and Effect

Before the stockholders of a corporation can go into court, they must first exhaust their remedy within the corporation itself. Because of the power and authority lodged in the stockholders, courts of equity refuse to listen to their complaints, unless it appear that the situation of the parties is such that they cannot secure relief from the corporate authorities. *Brandt v. Me-*

15-406. (5938) Organization of board of directors, etc. Immediately after their election the directors must organize by the election of a president, who must be one of their number, a secretary, and treasurer. They must perform the duties enjoined on them by law and the by-laws of the corporation. A majority of the directors is a sufficient number to form a board for the transaction of business, and every decision of a majority of the directors forming such board, made when duly assembled, is valid as a corporate act.

History: En. Sec. 437, Civ. C. 1895; re-en. Sec. 3836, Rev. C. 1907; re-en. Sec. 5938, R. C. M. 1921. Cal. Civ. C. Sec. 308.

Power of President

Notwithstanding this section, the general executive officer of a corporation may, specifically or by implication, be authorized by the directors thereof to conduct its business under their directions. *Edwards v. Plains Light & Water Co.*, 49 M 535, 547, 142 P 962.

The general implication that where the president of a corporation makes a contract within the ordinary scope of the corporation a person dealing with the president may proceed upon the assumption that the officer has authority to bind his principal must be more strongly drawn where the instrument in question is a promissory note of the corporation; but

where it is shown that like notes issued by him in the name of the corporation, signed by its president and secretary, with the corporate seal affixed, were ratified by it, the testimony tends to prove a custom and acquiescence from which implied authority may be presumed. *Alley v. Butte & Western Min. Co.*, 77 M 477, 492, 251 P 517.

Powers of Secretary

The secretary of a corporation has not, by virtue of his office alone, authority to bind it by contract. *Aetna C. & S. Co. v. American B. Co.*, 63 M 474, 479, 208 P 921.

Quorum Sufficient to Transact Business

Where only three out of five directors provided for in the articles of incorporation as the number constituting the board of directors of a railroad corporation had

been selected by the stockholders, the corporate acts of the three, constituting, as they did, a quorum, were valid, as against an attack by one outside the corporation or by the state, so long as they acted either unanimously or by a majority of such quorum. *Great Falls etc. Ry. Co. v. Ganong*, 48 M 54, 56, 136 P 390.

References

Cited or applied as section 3836, Revised Codes, in *Daily v. Marshall*, 47 M 377, 391, 133 P 681; In *re Sharp Bros.*, 2 F Supp 227.

Collateral References

Corporations 297.
19 C.J.S. *Corporations* § 742.

Power of president of corporation to have litigation instituted by it where board of directors has failed or refused to grant permission. 10 ALR 2d 701.

Power of corporate officers with respect to payment of remuneration, bonus and the like, to widow or family of deceased officer. 29 ALR 2d 1262.

Authority of corporate officers to indorse and transfer commercial paper. 37 ALR 2d 523.

15-407. (5939) Corporate dividends payable out of net assets or net profit—reserve. (1) The directors or trustees of every corporation shall have power to declare and pay dividends upon the shares of its capital stock either (a) out of its net assets in excess of the aggregate amount of capital represented by the issued and outstanding stock having a par value and the amount of capital represented by shares without nominal or par value, if any, or (b), in case there shall be no such excess, out of its net profits for the fiscal year then current or for the preceding fiscal year or both; provided, however, that if the capital of the corporation shall have been diminished by depreciation in the value of its property, or by losses, or otherwise, to an amount less than the aggregate amount of the capital represented by the issued and outstanding stock of all classes having a preference upon the distribution of assets, the directors or trustees of such corporation shall not declare and pay out of such net profits any dividends upon any shares of any class of its capital stock until the deficiency in the amount of capital represented by the issued and outstanding stock of all classes having a preference upon the distribution of assets shall have been repaired.

(2) Subject to any restrictions contained in its articles of incorporation, the directors or trustees of any corporation engaged in the exploitation of wasting assets or owning shares of stock of any other corporation engaged in the exploitation of wasting assets, may determine the net profits derived from the exploitation of such wasting assets owned by it or by such other corporation without taking into consideration the depletion of such assets resulting from lapse of time or from necessary consumption of such assets incidental to their exploitation. Nothing contained in this section shall prevent the stockholders of any corporation, or the directors or trustees thereof, if the articles of incorporation shall so provide, from setting apart out of any of the funds of the corporation available for dividends a reserve or reserves for any proper purpose or from abolishing any such reserve in the manner in which it was created. A director or trustee shall be fully protected in relying in good faith upon the books of account of the corporation or statements prepared by any of its officials as to the value and amount of the assets and liabilities or net profits of the corporation or either or any other facts pertaining to the existence and amount of surplus or other funds from which dividends might properly be declared and paid.

(3) Except as hereinbefore or hereinafter provided, the directors or trustees of corporations must not make dividends, except from the surplus

profits arising from the business thereof; nor must they divide, withdraw, or pay to the stockholders, or any of them, any part of the capital stock except as hereinbefore or hereinafter specifically provided; provided, however, that anything herein contained to the contrary notwithstanding, the directors or trustees of a corporation may make dividends out of any funds of the corporation theretofore set aside as a reserve for depreciation or obsolescence if authorized and empowered so to do by a resolution of stockholders of the corporation representing at least three-fourths ($\frac{3}{4}$) of the whole number of shares of the corporation then outstanding, and of record on the books of the corporation and entitled to vote.

(4) For a violation of the provisions of this section, the directors or trustees under whose administration the same may have happened (except those who may have caused their dissent therefrom to be entered at large in the minutes of the directors or trustees at the time, or were not present when the same did happen), are in their individual and private capacity, jointly and severally liable to the corporation and to the creditors thereof in the event of its dissolution, to the full amount of the capital stock so divided, withdrawn, paid out or reduced; and no statute of limitations is a bar to any suit against such directors or trustees for any sums for which they are made liable by this section. There may be, however, a division and distribution of the capital stock of any corporation which remains after the payment of all its debts, upon its dissolution, or the expiration of its term of existence.

History: En. Sec. 438, Civ. C. 1895; re-en. Sec. 3837, Rev. C. 1907; amd. Sec. 1, Ch. 37, L. 1919; re-en. Sec. 5939, R. C. M. 1921; amd. Sec. 1, Ch. 72, L. 1941; amd. Sec. 1, Ch. 141, L. 1943. Cal. Civ. C. Sec. 309.

Cross-Reference

Dividends not declared except from surplus, sec. 94-2306.

Operation and Effect

The mere repurchase of capital stock by a corporation would not tend to decrease it, unless the directors should absolutely merge or extinguish the stock after its repurchase. If it is unlawful to decrease the capital stock, presumptively the directors did not violate the law. It would require some positive showing to the con-

trary to overturn this presumption. *Porter v. Plymouth Gold Min. Co.*, 29 M 347, 358, 359, 74 P 938.

References

Continental Oil Co. v. Montana C. Co., 63 M 223, 227, 207 P 116; *First Nat. Bank v. Cosier et al.*, 66 M 352, 356, 213 P 442.

Collateral References

Corporations ¶152, 217, 224.
18 C.J.S. *Corporations* §§ 461, 602, 607.
13 Am. Jur. 637, *Corporations*, §§ 645 et seq.

Effect of impairment of capital or existence of debts on preferred stockholders' right to dividends. 6 ALR 818.

Right or duty of corporation to pay dividends, and liability for wrongful payments. 55 ALR 8.

15-408. (5940) Removal of directors. No director shall be removed from office unless by a vote of two-thirds of the members, or of stockholders holding two-thirds of the capital stock, at a general meeting held after previous notice of the time and place and of the intention to propose such removal. Meetings of stockholders for this purpose may be called by the president, or by a majority of the directors, or by members or stockholders holding at least one-half of the votes. Such calls must be in writing, and addressed to the secretary, who must thereupon give notice of the time, place, and object of the meeting, and by whose order it is called. If the secretary refuses to give the notice, or if there is none, the call may be

addressed directly to the members or stockholders, and be served as a notice, in which case it must specify the time and place of meeting. The notice must be given in the manner provided in section 15-301 of this code, unless other express provision has been made therefor in the by-laws. In case of removal, the vacancy may be filled by election at the same meeting.

History: En. Sec. 439, Civ. C. 1895; 3838, Revised Codes, in *Brandt v. Mc-re-en. Sec. 3838, Rev. C. 1907; re-en. Sec. 5940, R. C. M. 1921. Cal. Civ. C. Sec. 310.* Intosh, 47 M 70, 73, 130 P 413; Cobb et al. v. Lee, 80 M 328, 337, 260 P 722.

References

Cited or applied as section 439, Civil Code, in *Smith v. Iron Mountain Tunnel Co.*, 46 M 13, 17, 125 P 649; as section

Collateral References

Corporations Ⓒ294.
19 C.J.S. *Corporations* § 738.
13 Am. Jur. 865, *Corporations*, § 880.

15-409. (5941) Resignation of directors or officers of corporations. Any director, trustee, or other officer of a corporation may resign his office by delivering to the secretary or president of the corporation, or depositing in the postoffice, in an envelope securely sealed, with the necessary amount of postage prepaid thereon, and addressed to the corporation, at its principal place of business, his written resignation, and filing in the office of the clerk and recorder of the county where the principal office or place of business of the said corporation is situated, a duplicate of the said resignation, together with an affidavit of the delivery or mailing of said resignation, as above specified, or an acknowledgment of service thereof, and by publishing in two consecutive issues of the official paper of the county where said company may be doing business a notice of said resignation, and the director, trustee, or other officer shall, upon such filing and publication, no longer be responsible for any act or default of the corporation, or of the other officers thereof, occurring after the date of said filing; provided, however, that any director, trustee, or other officer shall also comply with the by-laws of the corporation relating to resignations of directors or officers. This act shall apply to resident directors of foreign corporations having a place or places of business in this state, as well as to directors and other officers of domestic corporations.

History: En. Sec. 1, Ch. 90, L. 1907; re-en. Sec. 3852, Rev. C. 1907; re-en. Sec. 5941, R. C. M. 1921.

Operation and Effect

An informal written notice, delivered to the president of a corporation by one of its directors, to the effect that the writer thereby resigned his office as such, was sufficient, the method prescribed by this section in this behalf being permissive, not exclusive. *Goodrich Rubber Co. v. Helena Motor Car Co.*, 53 M 526, 528, 165 P 455.

Id. The language of this section does not clearly indicate an intention to prescribe an exclusive method, but rather in-

dicates a mode which is permissive, designed primarily for cases where the ordinary method may not be available, or where positive proof of the resignation may be desired. The section forms no part of the law imposing the duty of filing annual statements, and there is no special reason to believe that its provisions were enacted for the benefit of creditors.

Collateral References

Corporations Ⓒ292.
19 C.J.S. *Corporations* § 736.
13 Am. Jur. 865, *Corporations*, §§ 883-888.

15-410. (5942) False certificate, report or notice—officers liable. Any officer of a corporation who wilfully gives a certificate, or wilfully makes an official report, public notice, or entry in any of the records or books of the corporation, concerning the corporation or its business, which is false in any material representation, shall be liable for all the damages resulting therefrom to any person injured thereby, and if two or more officers unite

or participate in the commission of any of the acts herein designated, they shall be jointly and severally liable.

History: En. Sec. 445, Civ. C. 1895; re-en. Sec. 3844, Rev. C. 1907; re-en. Sec. 5942, R. C. M. 1921. Cal. Civ. C. Sec. 316.

Operation and Effect

The trustees of a corporation, who filed a report which did not specify as a debt of the company its liability on a covenant of title, are not liable for a false report, if at the time the report was filed, the breach of the covenant was not known to them, and such a report is not false in stating that the capital was paid in full because of the mere fact that the property for which it was issued has decreased in value. *Giddings v. Holter*, 19 M 263, 267, 48 P 8.

Quaere: May a corporation be held liable for injury resulting to a person from the issuance of a false certificate issued by its secretary, in view of this section,

providing that for such an act the officer himself shall respond in damages? *Aetna C. & S. Co. v. American B. Co.*, 63 M 474, 482, 208 P 921.

Id. Where the by-laws of a corporation provided that a special meeting of the board of directors could be called by the president or at his request by the secretary, the secretary and the third member of the board were without authority to call such a meeting, and a surety company which relied upon the certificate of the secretary that at the meeting he had been empowered to enter into a contract of indemnity in behalf of the corporation, did so at its peril.

Collateral References

Corporations 306, 317.

18 C.J.S. Corporations § 89; 19 C.J.S. Corporations §§ 781, 839, 842-846, 849.

15-411. (5942.1) Insurance on directors' lives. (a) Whenever a corporation, organized under the laws of this state, has heretofore caused or shall hereafter cause to be insured the life of any director, officer, agent or employee, or whenever such corporation is named as a beneficiary in or assignee of any policy of life insurance, due authority to effect, assign, release, relinquish, convert, surrender, change the beneficiary, or to take any other or different action with reference to such insurance, shall be sufficiently evidenced to the insurance company by a written statement to that effect, signed by the president and the secretary or other corresponding officers of such corporation, under its corporate seal. Such statement shall be binding upon such corporation and shall protect the insurance company concerned in any act done or suffered by it upon the faith thereof without further inquiry into the validity of the corporate authority or the regularity of the corporate proceedings.

(b) No person shall be disqualified, by reason of interest in the subject matter, from acting as a director or as a member of the executive committee of such corporation on any corporate act touching such insurance.

History: En. Sec. 1, Ch. 31, L. 1927.

Collateral References

Corporations 406(1).

19 C.J.S. Corporations § 1044.

15-412. (5942.2) Indemnification of directors and officers for liabilities and expenses incurred by them in connection with the defense of certain suits. (1) Each director or officer, and their personal representatives, of a corporation created under the laws of this state shall be indemnified by the corporation against claims, liabilities, expenses, and costs actually and necessarily incurred by him or his estate in connection with, or arising out of, any action, suit or proceeding in which he is made a party by reason of his being, or having been, an officer or director of such corporation, or of any other company fifty per centum (50%) or more of the voting stock of which is owned by such corporation and which he serves as a director or officer at the request of such corporation; provided that such corporation shall not

indemnify such director or officer with respect to any matters as to which he shall be finally adjudged in such action, suit or proceeding to have been liable for actual negligence or misconduct in the performance of his duties as such director or officer.

(2) The indemnification herein provided for shall also apply in respect of any amount paid in compromise of any such claim asserted against such director or officer (including expenses and costs actually and necessarily incurred in connection therewith), provided the board of directors of the corporation shall have first approved such proposed compromise settlement and determined that the director or officer involved was not guilty of actual negligence or misconduct; but in taking such action any director involved shall not be qualified to vote thereon, and if for this reason a quorum of the board cannot be obtained to vote on such matter it shall be determined by a majority of the disinterested members of the board, whether or not a quorum, or such matter may be determined by a committee of three (3) disinterested stockholders appointed by the stockholders at a duly called special or regular meeting. As to whether or not a director or officer was guilty of actual negligence or misconduct in relation to any such matters the board of directors of such corporation and each director and officer thereof may conclusively rely upon an opinion of independent legal counsel selected by the board of directors or by the disinterested members of the board, or by said stockholders' committee, as the case may be.

History: En. Sec. 1, Ch. 84, L. 1943.

CHAPTER 5

MEETINGS OF STOCKHOLDERS AND DIRECTORS—ELECTIONS

- Section 15-501. Meetings of stockholders and board of directors—where held.
15-502. Special meeting—how called.
15-503. Justice of the peace may order meeting, when.
15-504. Majority of voting stock must be represented.
15-505. Stock of minors, etc.—how represented.
15-506. Election may be postponed.
15-507. Complaint as to elections.
15-508. Meeting by consent valid.
15-509. Business that may be transacted at consent meetings.

15-501. (5943) Meetings of stockholders and board of directors—where held. The meetings of the stockholders of a corporation must be held at its office or principal place of business in the state of Montana, except as hereinafter provided. The meetings of the board of directors or trustees of all corporations heretofore or hereafter organized under any of the laws of the state of Montana may be held either within or without the state of Montana, at such place or places as may be designated by the by-laws of such corporations. In case the meetings of the board of directors or trustees of a corporation shall be held outside of the state of Montana, either the original minutes of each meeting containing a record of all proceedings had thereat and signed by the chairman and secretary of such meeting, or full and complete copies or duplicates of such minutes certified by such chairman and secretary, under the seal of said corporation, shall be sent to and kept at the principal office or place of business of the corporation in Montana, and

shall be part of the records in Montana. The meetings of the stockholders of all corporations organized in conformity with the requirements of the laws of the United States and of the state of Montana, for the purpose of furnishing water only to its stockholders, called for the purpose of electing directors, may be held in the several director districts of such corporation, at such place in each director district as may be designated by the board of directors, and no shareholder shall be permitted to vote at any such shareholders' meeting, except the meeting held in the director district as may be fixed by the by-laws of said corporation.

History: En. Sec. 448, Civ. C. 1895; amd. Sec. 1, p. 108, L. 1899; amd. Sec. 1, Ch. 151, L. 1907; re-en. Sec. 3847, Rev. C. 1907; re-en. Sec. 5943, R. C. M. 1921; amd. Sec. 1, Ch. 10, L. 1947. Cal. Civ. C. Sec. 319.

18 C.J.S. Corporations § 541; 19 C.J.S. Corporations § 746; 67 C.J. Waters § 998 et seq.

13 Am. Jur., Corporations, p. 515, §§ 472-509; p. 909, §§ 948-960.

Collateral References

Corporations 193, 298(2) et seq.; Waters and Water Courses 232.

15-502. (5944) Special meeting — how called. When no provision is made in the by-laws for regular meetings of the directors and for the mode of calling special meetings, all meetings must be called by special notice in writing, to be given to each director by the secretary, on the order of the president, or if there is none, on the order of two directors.

History: En. Sec. 449, Civ. C. 1895; re-en. Sec. 3848, Rev. C. 1907; re-en. Sec. 5944, R. C. M. 1921. Cal. Civ. C. Sec. 320.

The only object of the notice is that the directors have an opportunity of being present at the meeting and taking part in its proceedings. *O'Rourke v. Grand Opera House Co.*, 47 M 459, 467, 133 P 965.

Supplanted By By-Laws When They Provide for Special Meetings

Under the express terms of this section, the method therein provided for the calling of special meetings of the directors of a corporation, has no application where the by-laws declare how such meetings shall be called. *Aetna C. & S. Co. v. American B. Co.*, 63 M 474, 482, 208 P 921.

When Notice Is Dispensable

Notice in writing to the members of the board of directors of a corporation of the holding of a special meeting, as required by this section, was not indispensable to the legality of the proceedings, where all the directors attended and participated without objection in the dispatch of the business in hand. *O'Rourke v. Grand Opera House Co.*, 47 M 459, 466, 133 P 965.

Written Notice

Verbal notice of a special meeting of the board of trustees of a corporation organized under the Compiled Statutes of 1887 was sufficient to make its proceedings proof against the objection that they were void because not based upon a written notice. *O'Rourke v. Grand Opera House Co.*, 47 M 459, 466, 133 P 965.

References

Cited or applied as section 3848, Revised Codes, in *Daily v. Marshall*, 47 M 377, 391, 133 P 681; *Cobb et al. v. Lee*, 80 M 328, 338, 260 P 722.

Collateral References

13 Am. Jur. 912, Corporations, § 952.

15-503. (5945) Justice of the peace may order meeting, when. Whenever, from any cause, there is no person authorized to call or to preside at the meeting of a corporation, any justice of the peace of the county where such corporation is established may, on written application of three or more of the stockholders or of the members thereof, issue a warrant to one of the stockholders or members, directing him to call a meeting of the corporation, by giving the notice required, and the justice may, in the same warrant, direct such person to preside at such meeting until a clerk is chosen and

qualified, if there is no other officer present legally authorized to preside thereat.

History: En. Sec. 440, Civ. C. 1895;
re-en. Sec. 3839, Rev. C. 1907; re-en. Sec.
5945, R. C. M. 1921. Cal. Civ. C. Sec. 311.

Collateral References

Corporations 194.
18 C.J.S. Corporations §§ 543, 544.

15-504. (5946) Majority of voting stock must be represented. (1)

Except as hereinafter provided, at all meetings, elections or votes of any corporation heretofore or hereafter organized under any of the laws of Montana, whether formed and existing before or after the taking effect of the codes on July 1, 1895, had for any purpose, there must be a majority of the outstanding capital stock of the corporation, entitled under the articles of incorporation, and the amendments thereto and the laws and constitution of Montana to vote at such meeting, election or vote, or a majority of the members, represented either in person or by proxy, in writing; provided that any corporation heretofore organized under any of the laws of Montana, whether formed and existing before or after the taking effect of the codes on July 1, 1895, or that may hereafter be formed under this chapter, may by its by-laws prescribe the proportion of its outstanding capital stock entitled to vote, as hereinbefore provided, or of its members, represented in person or by proxy, which shall constitute a quorum at any regular annual meeting of such corporation, held at the time and place prescribed in its by-laws, for the election of directors, and for all votes upon matters properly coming before such annual meeting without special notice thereof.

(2) Each share of stock entitled under the articles of incorporation, or amendments thereto and the laws and constitution of Montana, to be voted, may, at every meeting of the stockholders, be voted by the holder of record thereof on the books of the corporation, or proxy, and except where the transfer books of the corporation shall have been closed, or a date shall have been fixed as a record date for the determination of its stockholders entitled to vote, as hereinafter provided, no share of stock shall be voted on at any election of directors which shall have been transferred on the books of the corporation within ten (10) days next preceding such election of directors. The board of directors shall have power to close the stock transfer books of the corporation for a period not exceeding sixty (60) days preceding the date of any meeting of stockholders or election or vote; provided, however, that in lieu of closing the stock transfer books as aforesaid, the by-laws may fix or authorize the board of directors to fix in advance a date, not exceeding sixty (60) days preceding the date of any meeting of stockholders, election or vote, as a record date for the determination of the stockholders entitled to notice of and to vote at any such meeting, election or vote, and in such case such stockholders, and only such stockholders, as shall be stockholders of record on the date so fixed of stock entitled to vote as aforesaid, shall be entitled to such notice of and to vote at such meeting, election or vote, notwithstanding any transfer of any stock on the books of the corporation after any such record date fixed as aforesaid.

(3) Any vote or election had other than in accordance with the provisions of this article is voidable at the instance of any stockholders en-

titled to be represented and vote, or members, and may be set aside by petition to the district court of the county where the same was held. Any regular or called meeting of the stockholders or members may adjourn from day to day, or from time to time. If for any reason there is not present a quorum as hereinbefore provided, of the outstanding stock entitled to vote, or members, or no election had, the stockholders or members present or represented may adjourn, and such adjournment and the reasons therefor shall be recorded in the journal of the proceedings of the meetings of stockholders.

History: En. Sec. 441, Civ. C. 1895; re-en. Sec. 3840, Rev. C. 1907; amd. Sec. 1, Ch. 263, L. 1921; re-en. Sec. 5946, R. C. M. 1921; amd. Sec. 1, Ch. 40, L. 1931; amd. Sec. 1, Ch. 12, L. 1955. Cal. Civ. C. Sec. 312.

References

Cited or applied as section 3840, Revised Codes, in *Enterprise Sheet Metal Works v.*

Schendel, 55 M 42, 52, 173 P 1059; Gillies v. Robert E. Lee Mining Co., 78 M 402, 412, 254 P 422; In re Sharp Bros., 2 F Supp 227.

Collateral References

Corporations—195-198, 283, 284.
18 C.J.S. Corporations §§ 456, 548, 550, 552, 553; 19 C.J.S. Corporations § 716.

15-505. (5947) Stock of minors, etc.—how represented. The shares of stock of an estate of a minor, or person of unsound mind, may be represented by his guardian, and of a deceased person by his executor or administrator.

History: En. Sec. 442, Civ. C. 1895; re-en. Sec. 3841, Rev. C. 1907; re-en. Sec. 5947, R. C. M. 1921. Cal. Civ. C. Sec. 313.

References

Springhorn v. Dirks et al., 72 M 121, 134, 231 P 912.

Operation and Effect

Held, that the provision of this section that shares of stock owned by an estate may be represented by the executor or administrator, is broad enough to include a special administrator, if under any conceivable circumstances the probate court may authorize such officer, in the absence of statute in terms permitting it, to vote such stock. *Gow v. Cascade Silver Mines & Mills Co.*, 66 M 488, 493, 495, 213 P 1092.

Collateral References

Corporations—197 et seq.; Executors and Administrators—122(1), 154 et seq.; Guardian and Ward—35; Mental Health—179.
18 C.J.S. Corporations § 548; 34 C.J.S. Executors and Administrators §§ 300, 690; 39 C.J.S. Guardian and Ward § 74; 44 C.J.S. Insane Persons § 49.

15-506. (5948) Election may be postponed. If from any cause an election does not take place on the day appointed in the by-laws, it may be held on any day thereafter as is provided for in such by-laws, or to which such election may be adjourned or ordered by the directors. If an election has not been held at the appointed time, and no adjourned or other meeting for the purpose has been ordered by the directors, a meeting may be called by the stockholders as provided in section 15-408 of this code.

History: En. Sec. 443, Civ. C. 1895; re-en. Sec. 3842, Rev. C. 1907; re-en. Sec. 5948, R. C. M. 1921. Cal. Civ. C. Sec. 314.

Collateral References

Corporations—283(1), 284.
19 C.J.S. Corporations §§ 717, 718, 721.

15-507. (5949) Complaint as to elections. Upon the application of any person or body corporate aggrieved by any election held by any corporate body, the district court of the district in which such election was held, or a judge thereof, must proceed forthwith to hear the allegations and proofs of the parties, or otherwise inquire into the matters of complaint, and thereupon confirm the election, order a new one, or direct such other relief in the premises as accords with right and justice. Upon filing the petition,

and before any further proceedings are had under this section, five days' notice of the hearing must be given, under the direction of the court or the judge thereof, to the adverse party, or those to be affected thereby.

History: En. Sec. 444, Civ. C. 1895; re-en. Sec. 3843, Rev. C. 1907; re-en. Sec. 5949, R. C. M. 1921. Cal. Civ. C. Sec. 315.

Collateral References

Corporations \Rightarrow 283(3), 284.
19 C.J.S. Corporations §§ 721, 725.

15-508. (5950) Meeting by consent valid. When all the stockholders, entitled under the articles of incorporation, and the amendments thereto and the laws and constitution of Montana, to vote at such meeting, or members, of any corporation organized under any of the laws of Montana, whether formed and existing before or after the taking effect of the Codes on July 1, 1895, are present at any meeting, however called or notified, and sign a written consent thereto on the record of such meeting, the acts and proceedings of such meeting are as valid as if had at a meeting legally called and noticed.

History: En. Sec. 446, Civ. C. 1895; re-en. Sec. 3845, Rev. C. 1907; re-en. Sec. 5950, R. C. M. 1921; amd. Sec. 2, Ch. 40, L. 1931. Cal. Civ. C. Sec. 317.

Collateral References

Corporations \Rightarrow 194.
18 C.J.S. Corporations § 544.

15-509. (5951) Business that may be transacted at consent meetings. The stockholders or members of such corporation, when so assembled, may elect officers to fill all vacancies then existing, and may act upon such other business as might lawfully be transacted at regular meetings of the corporation.

History: En. Sec. 447, Civ. C. 1895; re-en. Sec. 3846, Rev. C. 1907; re-en. Sec. 5951, R. C. M. 1921. Cal. Civ. C. Sec. 318.

Collateral References

Corporations \Rightarrow 196, 283, 284.
18 C.J.S. Corporations § 545; 19 C.J.S. Corporations § 717 et seq.

CHAPTER 6

CORPORATE STOCK AND RIGHTS OF STOCKHOLDERS— UNIFORM STOCK TRANSFER ACT

- Section 15-601. Who are members and who are stockholders of corporations.
15-602. Certificates of stock—how and when issued.
15-603. Transfer of shares—when title passes.
15-604. Transfer of shares by married woman—payment of dividends—married woman's proxy.
15-605. Affidavit or bond may be required before transfer in case of nonresident stockholders.
15-606. Five per cent of stock may demand statement.
15-607. Loan to stockholders.
15-608. Stock certificate may be issued to bearer.
15-609. Foreign registry—proxy.
15-610. Notice of meetings waived.
15-611. Bearer may vote.
15-612. Dividends payable to bearer.
15-613. Bearer certificates convertible into registered certificates.
15-614. Corporation may adopt necessary by-laws.
15-615. Liability of stockholders.
15-616. Payment for subscribed stock.
15-617. Promissory notes in payment of shares of stock.
15-618. Same—defenses available in action on.
15-619. Stock issued for purchase of property.
15-620. Acquisition of stock or securities of other corporations.

- 15-621. Determination of stock ownership previous to payment of dividends or other corporate procedure.
- 15-622. Issuance of non par stock authorized—provisions concerning.
- 15-623. Sale of non par stock—consent of stockholders—fully paid and nonassessable nature of non par stock.
- 15-624. Equality of non par shares—statements on certificates.
- 15-625. Fees applicable to non par stock—value for figuring fees.
- 15-626. Provision concerning non par stock additional to other laws.
- 15-627. Anti-trust law continued in force.
- 15-628. How title to certificates and shares may be transferred.
- 15-629. Powers of those lacking full legal capacity and of fiduciaries not enlarged.
- 15-630. Corporation not forbidden to treat registered holder as owner.
- 15-631. Title derived from certificate extinguishes title derived from a separate document.
- 15-632. Who may deliver a certificate.
- 15-633. Indorsement effectual in spite of fraud, duress, mistake, revocation, death, incapacity or lack of consideration or authority.
- 15-634. Rescission of transfer.
- 15-635. Rescission of transfer of certificate does not invalidate subsequent transfer by transferee in possession.
- 15-636. Delivery of unindorsed certificate imposes obligation to indorse.
- 15-637. Ineffectual attempt to transfer amounts to a promise to transfer.
- 15-638. Warranties on sale of certificate.
- 15-639. No warranty implied from accepting payment of a debt.
- 15-640. Attachment or levy upon shares—how accomplished—surrender—enjoinment.
- 15-641. Creditor's remedies to reach certificate.
- 15-642. There shall be no lien or restriction unless indicated on certificate.
- 15-643. Alteration of certificate does not divest title to shares.
- 15-644. Lost or destroyed certificate.
- 15-645. Rule for cases not provided for by this act.
- 15-646. Interpretation shall give effect to purpose of uniformity.
- 15-647. Definition of indorsement.
- 15-648. Definition of person appearing to be the owner of certificate.
- 15-649. Other definitions.
- 15-650. The application of the transfer act.
- 15-651. Name of act.

15-601. (5952) Who are members and who are stockholders of corporations. The owners of shares in a corporation which has a capital stock are called stockholders. If a corporation has no capital stock, the incorporators and their successors are called members.

History: En. Sec. 408, Civ. C. 1895; re-en. Sec. 3822, Rev. C. 1907; re-en. Sec. 5952, R. C. M. 1921. Cal. Civ. C. Sec. 298.

Operation and Effect

This section, as well as section 15-401 recognizes that there may be corporations without a capital stock. Daily v. Marshall, 47 M 377, 390, 133 P 681.

References

Cited or applied as section 3822, Revised Codes, in Smith v. Iron Mountain Tunnel Co., 46 M 13, 17, 125 P 649; Gallatin Co. F. Alliance v. Flannery, 59 M 534, 537, 197 P 996.

Collateral References

Corporations 170.
18 C.J.S. Corporations § 475.

15-602. (5953) Certificates of stock—how and when issued. All corporations for profit must issue certificates for stock when fully paid up, signed by the president and secretary, and may provide, in their by-laws, for issuing certificates prior to the full payment, under such restrictions and for such purposes as their by-laws may provide.

History: En. Sec. 471, Civ. C. 1895; re-en. Sec. 3854, Rev. C. 1907; re-en. Sec. 5953, R. C. M. 1921. Cal. Civ. C. Sec. 323.

Cross-References

Fraud in issuing or disposing of stock, sec. 94-2303.

Surrendered or cancelled stock, unlawful disposal, sec. 94-2303.

References

Kirkup v. Anaconda Amusement Co., 59 M 469, 485, 197 P 1005.

Collateral References

Corporations 94.
18 C.J.S. Corporations § 258.
13 Am. Jur. 296, Corporations, §§ 171 et seq.

Holders of preferred stock, rights in respect to dividends. 6 ALR 802.

Liability as on unpaid subscription, of transferees of stock issued in exchange for property or services at an overvaluation. 12 ALR 449.

Corporate stock without par value. 19 ALR 131.

Certificate of stock as conclusive and exclusive evidence of stockholder's rights. 31 ALR 1326.

Construction and effect of provision for preference or redemption of preferred stock in respect of capital value. 33 ALR 1257.

Duty of promoter to account for proceeds of sale of stock issued to him. 43 ALR 1363.

Power to create preferred stock as against existing preferred stock. 44 ALR 72.

Usury in underwriting an issue of securities at less than par. 45 ALR 570.

Stockholders' privilege as to acquisition of new issue of stock by corporation. 52 ALR 220.

Right or duty of corporation to pay dividends, and liability for wrongful payment. 55 ALR 8.

Right of corporation itself, in absence

of fraud against it, to complain that stock issued as fully paid was based on overvaluation of property, or receipt of less than par value. 56 ALR 396.

Note as consideration for issuance of corporate stock. 58 ALR 708.

Rights of seller and purchaser of stock to dividends declared thereon. 60 ALR 703.

Binding effect of subscription to stock in corporation to be formed. 61 ALR 1463.

Responsibility of corporation for misstatement by officer or employee to induce or influence purchase of stock. 66 ALR 1450.

Right of pledgee of corporate stock in respect of dividends declared thereon. 67 ALR 485.

Right of corporation to deny validity of stock issued by it in violation of statutory or constitutional provisions respecting receipt of consideration, as against subsequent bona fide purchasers or pledgees for value. 73 ALR 1435.

Accrued dividends on preferred stock. 75 ALR 1150.

Validity, construction, and effect of provisions of articles of incorporation or certificates of stock relating to redemption or retirement of stock. 88 ALR 1131.

Voting power of corporation stock as confined to issued and outstanding stock to exclusion of authorized and issued stock or stock which has been reacquired by corporation. 90 ALR 315.

Construction and application of provisions of statute, charter, by-laws, or stock certificates conferring upon holders of preferred or other specified class of stock a right to vote in event of nonpayment of dividends or other specified conditions. 154 ALR 418.

15-603. (5954) Transfer of shares—when title passes. The delivery of a stock certificate of a corporation to a bona fide purchaser or pledgee for value, together with a written transfer of the same, or a written power of attorney to sell, assign, and transfer the same, signed by the owner of the certificate, shall be a sufficient delivery to transfer the title as against the creditors of the transferor and subsequent purchasers, but no such transfer shall affect the right of the corporation to pay any dividend due upon the stock, or treat the holder of record as the holder in fact, until such transfer is recorded upon the books of the corporation, or a new certificate is issued to the person to whom it has been transferred.

History: En. Sec. 472, Civ. C. 1895; amd. Sec. 1, Ch. 143, L. 1907; re-en. Sec. 3855, Rev. C. 1907; re-en. Sec. 5954, R. C. M. 1921. Cal. Civ. C. Sec. 324.

If Corporation Has Notice of Transfer, Must Pay Dividend to Transferee

Stockholder of defendant pledged share to plaintiff and agreed dividends should be paid the pledgee. Pledgee notified defend-

ant of the pledge but the stock was never transferred on the books of the corporation. In suit by pledgee to recover value of dividends declared it was held this section did not constitute a defense, and since the corporation had actual notice of pledgee's right to the dividends, although not an owner of record, the corporation was liable. Homstake Oil Co. v. Rigger, 39 F 2d 40, 41.

Operation and Effect

Where corporate officers wrongfully refuse to transfer stock on the books of the corporation at the request of an assignee thereof, its refusal constitutes a conversion of the stock and he may sue for the recovery of its value. *Gillies v. Robert E. Lee Mining Co.*, 78 M 402, 410, 254 P 422.

Qualifications of both stockholders and officers are matter of record, and being for protection of corporation and public, record is conclusive. *In re Sharp Bros.*, 2 F Supp 227.

Id. Sale of all corporation's stock in foreclosure without transfer of record or issuance of new certificates held not to vacate presidency of incumbent of such office, so as to make service of process on him invalid as to corporation.

References

Cited or applied as section 472, Civil Code, before amendment, in *Barker v. Montana Gold etc. Min. Co.*, 35 M 351, 360, 89 P 66.

Collateral References

Corporations—114-136.

18 C.J.S. Corporations § 392 et seq.

13 Am. Jur. 406, Corporations, §§ 329 et seq.

Rescission of sale of corporate stock on account of mutual mistake due to error in corporate books. 5 ALR 255.

Failure to enter transfer of stock on corporate books as affecting liability of transferer for calls or assessments. 45 ALR 137.

Respective rights of owner of certificate of stock who intrusts it to a third person and a purchaser from the latter under a forged transfer or indorsement. 54 ALR 353.

Duty of corporation upon presentation for transfer of stock standing in one's name as trustee for other fiduciary. 56 ALR 1199.

Rights of seller and purchaser of stock to dividends declared thereon. 60 ALR 703.

Right of corporation to refuse to register to transfer of stock because of stockholder's indebtedness to it, where transfer is by operation of law. 65 ALR 220.

Validity of restrictions on alienation or transfer of corporate stock. 65 ALR 1159.

Right of pledgee of corporate stock in respect of dividends declared thereon. 67 ALR 485.

Assumption of payment or guaranty of corporation's indebtedness as consideration for transfer of its stock. 103 ALR 1417.

Rights, powers, and duties in respect of sale or transfer of corporate stock in which one holds a legal life estate as affected by Uniform Stock Transfer Act. 126 ALR 1302.

Conflict of laws as to title and transfer of corporate stock. 131 ALR 197.

Right or duty of corporation to refuse to transfer stock on books to one presenting properly indorsed certificates, because of knowledge or suspicion of conflicting rights of registered holder or of third person. 139 ALR 273.

Necessity of delivery of stock certificate to complete valid gift of stock as affected by statute. 152 ALR 435.

Infants or incompetents, rights, duties and liability of corporation in connection with transfer of stock of. 3 ALR 2d 881.

Rights, duties and liability in connection with transfer of stock of decedent. 7 ALR 2d 1240.

Validity of provision of voting trust against transfer of beneficiary's interest. 11 ALR 2d 1000.

Construction in effect of § 15 of Uniform Stock Transfer Act prohibiting restriction of transfer of shares unless such restriction is stated on the certificate. 29 ALR 2d 901.

Authority of corporate officers to indorse and transfer commercial paper. 37 ALR 2d 523.

15-604. (5955) Transfer of shares by married woman—payment of dividends—married woman's proxy. Shares of stock in corporations held or owned by a married woman may be transferred by her, her agent or attorney, without the signature of her husband, in the same manner as if such married woman were a femme sole. All dividends payable upon any shares of stock of a corporation held by a married woman may be paid to such married woman, her agent or attorney, in the same manner as if she were unmarried, and it is not necessary for her husband to join in a receipt therefor; and any proxy or power given by a married woman, touching any shares of stock of any corporation owned by her, is valid and binding without the signature of her husband, the same as if she were unmarried.

History: En. Sec. 473, Civ. C. 1895; 18 C.J.S. Corporations §§ 409, 547 et re-en. Sec. 3856, Rev. C. 1907; re-en. Sec. seq.; 41 C.J.S. Husband and Wife §§ 257, 5955, R. C. M. 1921. Cal. Civ. C. Sec. 325. 372, 384.

Collateral References

Corporations 155(2), 198; Husband and Wife 125, 193, 196.

15-605. (5956) Affidavit or bond may be required before transfer in case of nonresident stockholders. When the shares of stock in a corporation are owned by persons residing out of the state, the president, secretary, or directors of the corporation, before entering any transfer of the shares on its books, or issuing a certificate therefor to the transferee, may require from the attorney or agent of the nonresident owner, or from the person claiming under the transfer, an affidavit or other evidence that the nonresident owner was alive at the date of the transfer, and if such affidavit or other satisfactory evidence be not furnished, may require from the attorney, agent, or claimant a bond of indemnity, with two sureties, satisfactory to the officers of the corporation; or, if not so satisfactory, then one approved by the judge of the district court of the county in which the principal office of the corporation is situated, conditioned to protect the corporation against any liability to the legal representatives of the owner of the shares, in case of his or her death before the transfer, and if such affidavit or other evidence or bond be not furnished when required, as herein provided, neither the corporation nor any officer thereof shall be liable for refusing to enter the transfer on the books of the corporation.

History: En. Sec. 474, Civ. C. 1895; re-en. Sec. 3857, Rev. C. 1907; re-en. Sec. 5956, R. C. M. 1921. Cal. Civ. C. Sec. 326.

Operation and Effect

An instruction that under this section, corporate officers requested by the assignee of stock to transfer it on the books of the corporation could require no other affidavit as a condition to making transfer, where the assignor was a non-resident, than that the latter was living at the time he made assignment, and that failure to furnish

others was not a defense to an action in conversion, held correct, and that the addition of the words that it was for the jury and not for the officers to decide what was or was not a compliance with the statute did not render it prejudicially erroneous. *Gillies v. Robert E. Lee Mining Co.*, 78 M 402, 411 et seq., 254 P 422.

Collateral References

Corporations 130.
18 C.J.S. Corporations § 435.

15-606. (5957) Five per cent of stock may demand statement. Whenever any person or persons owning five per cent of the capital stock of any corporation shall present a written request to the treasurer thereof that they desire a statement of the affairs of such corporation, it shall be the duty of such treasurer to make a statement of the affairs of the corporation, under oath, embracing a particular account of all its assets and liabilities in minute detail, and to deliver such statement to the persons who presented the said written request to said treasurer within twenty days after such presentation, and shall also, at the same time, place and keep on file in his office for six months thereafter a copy of such statement, which shall, at all times during business hours, be exhibited to any stockholder of said corporation demanding an examination thereof; such treasurer, however, shall not be required to deliver such statement in the manner aforesaid oftener than once in six months. If such treasurer shall neglect or refuse to comply with any provisions of this chapter, he

shall forfeit and pay to the person presenting said request the sum of fifty dollars, and the further sum of ten dollars for every twenty-four hours thereafter until such statement shall be furnished, to be sued for and recovered in any court having cognizance thereof.

History: En. Sec. 27, p. 31, L. 1867; re-en. Sec. 27, p. 412, Cod. Stat. 1871; re-en. Sec. 270, 5th Div. Rev. Stat. 1879; re-en. Sec. 472, 5th Div. Comp. Stat. 1887; re-en. Sec. 475, Civ. C. 1895; re-en. Sec. 3858, Rev. C. 1907; re-en. Sec. 5957, R. C. M. 1921.

Evidence Must Support Contention of Fictitious Resignation

Where defendant, sought to be held for the penalty prescribed by this section for failure to furnish a statement of the financial condition of his corporation as treasurer showed by the records of a special meeting of directors some six weeks prior to the demand for such statement that his resignation had been accepted and his successor elected, the contention of plaintiff that the records were sham and fictitious, held, not supported by evidence. *Stanton Trust & Savings Bank v. Johnson*, 107 M 348, 354, 85 P 2d 336.

Must Be in Office for Liability to Attach—Estoppel

One who was not the treasurer of a corporation at the time a stockholder demanded a financial statement of its condition under this section, could not be made such under the doctrine of estoppel based on certain annual reports which bore his

name as treasurer; the rule being otherwise where the rights of a third person dealing with the corporation through the treasurer relied upon such reports to his damage, in which case the corporation would be estopped. The liability attaches to the treasurer as an official by virtue of the office, and not otherwise. *Stanton Trust & Savings Bank v. Johnson*, 107 M 348, 352, 85 P 2d 336.

Venue for Action to Recover Penalty

The legislature in enacting this statute did not intend to repeal or change the then existing laws relating to the right to demand a change of venue. "Jurisdiction" is the authority to hear and determine; "venue" is the place of trial. With no statutory direction as to manner of delivery of the statement, the treasurer could mail it from the county seat where he lived and the corporation had its principal place of business, hence the cause of action resulting from his refusal arose in that county under section 93-2902, and place of trial was properly changed to that county. *Stanton Trust & Savings Bank v. Johnson*, 104 M 235, 238, 65 P 2d 1188.

Collateral References

Corporations—181(7).

18 C.J.S. Corporations § 511.

15-607. (5958) Loan to stockholders. No loan of money shall be made by any corporation to any stockholder therein, and if such loan be made to a stockholder, the officer who shall make it, or who shall assent thereto, shall be jointly and severally liable, to the extent of such loan and interest, for all the debts of the corporation contracted before the repayment of the sum loaned.

History: En. Sec. 476, Civ. C. 1895; re-en. Sec. 3859, Rev. C. 1907; re-en. Sec. 5958, R. C. M. 1921.

Collateral References

Corporations—186, 225, 333, 336.

18 C.J.S. Corporations §§ 489, 582; 19 C.J.S. Corporations §§ 848, 849.

15-608. (5959) Stock certificate may be issued to bearer. Any corporation now existing or hereafter created or organized under or by virtue of the laws of the state of Montana, and having a capital stock non-assessable and fully paid within the meaning of the laws of this state, and whose object or purpose, in whole or in part, is to carry on the business of mining within this state, shall have the power to and may, by a vote of its stockholders, holding at least three-fourths of its capital stock, authorize or provide for the transfer and issue of certificates of stock which shall entitle the holder or bearer to the ownership of the same upon delivery and without transfer by indorsement or on the books of such corporation, subject, however, to the by-laws of the corporation and the provisions of this act, but no such

transfer or issue shall be made except upon surrender and cancellation of the certificate or certificates so to be transferred, and all bearer certificates so issued shall be delivered to and receipted for on the books of the company by the stockholder or his authorized agent at whose request such transfers shall be made, and thereafter, so far as the corporation is concerned, the bearer of any such bearer certificate shall for all purposes, except that of holding office, be deemed a stockholder of the company, owning and holding the number of shares of its capital stock represented by such bearer certificate, and the stock or shares thereby represented shall be listed to bearer on the list of stockholders and other books of the company.

History: En. Sec. 1, p. 69, L. 1897;
re-en. Sec. 3860, Rev. C. 1907; re-en. Sec.
5959, R. C. M. 1921.

Collateral References
Corporations \Rightarrow 95.

18 C.J.S. Corporations § 262.

15-609. (5960) Foreign registry—proxy. Any corporation which shall have issued bearer certificates may establish agencies in other states and in foreign countries whereat holders or bearers of bearer certificates may, under such regulations as the corporation shall prescribe, register and deposit their bearer certificates of stock for voting purposes. Such corporation shall have the right to appoint and prescribe the duties of, fix the compensation, and remove at pleasure its agent or agents at such agencies, and also to establish rules and regulations for registering and depositing bearer certificates of stock, and may at any time close up or terminate any such agency. Whenever, at any meeting of the stockholders of such corporation for election or other purposes, any such agent shall certify to the corporation in such manner as it may prescribe, that there is registered and deposited with him, to be held by him until after the meeting for which such registration and deposit shall have been made, a bearer certificate or certificates describing each by its face number, number of shares represented, and date of issue, and stating when and by whom deposited, the person who shall have made such deposit, may, in writing attested by such agent, appoint some suitable person to represent him at such meeting as his proxy, and there vote the shares of stock represented by his said bearer certificate or certificates so deposited, and thereupon the person to whom such proxy shall have been given may vote the shares of stock represented by such bearer certificate or certificates, in all matters and things upon which votes are cast or had at such meeting.

History: En. Sec. 2, p. 69, L. 1897;
re-en. Sec. 3861, Rev. C. 1907; re-en. Sec.
5960, R. C. M. 1921.

Collateral References
Corporations \Rightarrow 198.

18 C.J.S. Corporations § 550.

15-610. (5961) Notice of meetings waived. It shall not be necessary for the corporation or its officers or trustees or directors to give any personal notice or notice by mail to holders or bearers of such bearer certificates of any meeting of stockholders for the purpose of electing trustees or directors, or for any other purpose, or of any action taken or proposed to be taken by such corporation or its stockholders or its trustees or its directors at any meeting, but such notice may, in every case, be given to such holder or bearers of bearer certificates by publication in a newspaper as now provided by law, and shall be valid and binding. Every holder of a bearer certificate shall be held to have waived any notice of any stock-

holders' meeting for any purpose, or of any action or proposed action of the corporation or its stockholders or trustees or directors, except by publication in some newspaper when it is required by law.

History: En. Sec. 3, p. 69, L. 1897;
re-en. Sec. 3862, Rev. C. 1907; re-en. Sec.
5961, R. C. M. 1921.

Collateral References
Corporations \Rightarrow 194, 283(1), 284.
18 C.J.S. Corporations § 544; 19 C.J.S.
Corporations §§ 717, 721.

15-611. (5962) Bearer may vote. Except as herein provided, stock or shares of stock represented by a bearer certificate can only be voted or represented by actual production of such bearer certificate at the time of voting or representation, and by the bearer thereof. In all cases the actual production of a bearer certificate shall, so far as the corporation is concerned, be conclusive evidence of the bearer's right to vote or represent the shares it represents.

History: En. Sec. 4, p. 70, L. 1897;
re-en. Sec. 3863, Rev. C. 1907; re-en. Sec.
5962, R. C. M. 1921.

Collateral References
Corporations \Rightarrow 197, 283(2), 284.
18 C.J.S. Corporations § 548; 19 C.J.S.
Corporations §§ 720, 721.

15-612. (5963) Dividends payable to bearer. Dividends to holders of bearer certificates shall only be paid to the bearers thereof upon production of such certificates, except where such certificates of stock have attached to them dividend coupons payable to bearer, in which case dividends may be paid to the bearer of the proper dividend coupon upon its presentation and surrender, without the production of the certificate to which such dividend coupons belonged.

History: En. Sec. 5, p. 70, L. 1897;
re-en. Sec. 3864, Rev. C. 1907; re-en. Sec.
5963, R. C. M. 1921.

Collateral References
Corporations \Rightarrow 155(4).
18 C.J.S. Corporations § 469.

15-613. (5964) Bearer certificates convertible into registered certificates. Bearer certificates may at any time be converted into registered certificates, such as are now provided for by law, upon the request of the bearer of such bearer certificates, and the surrender of such bearer certificates to the corporation and the cancellation thereof, and registered certificates may also be converted and exchanged for bearer certificates at the request of the owners of such registered certificates, and the surrender and cancellation thereof.

History: En. Sec. 6, p. 71, L. 1897;
re-en. Sec. 3865, Rev. C. 1907; re-en. Sec.
5964, R. C. M. 1921.

Collateral References
Corporations \Rightarrow 127.
18 C.J.S. Corporations § 396.

15-614. (5965) Corporation may adopt necessary by-laws. The corporation may do all acts and adopt all by-laws and resolutions necessary or proper to carry into effect the powers herein granted, and to provide for details in the exercise thereof, subject, however, to the provisions of this act.

History: En. Sec. 7, p. 71, L. 1897;
re-en. Sec. 3866, Rev. C. 1907; re-en. Sec.
5965, R. C. M. 1921.

Collateral References
Corporations \Rightarrow 55.
18 C.J.S. Corporations § 186.

15-615. (5966) Liability of stockholders. The stockholders of every corporation shall be severally and individually liable to the creditors of the

corporation in which they are stockholders, to the amount of unpaid stock held by them respectively, for all acts and contracts made by such corporation, until the whole amount of capital stock subscribed for shall have been paid in.

History: Ap. p. Sec. 12, p. 27, L. 1867; re-en. Sec. 12, p. 408, Cod. Stat. 1871; re-en. Sec. 255, 5th Div. Rev. Stat. 1879; amd. Sec. 457, 5th Div. Comp. Stat. 1887; re-en. Sec. 470, Civ. C. 1895; re-en. Sec. 3853, Rev. C. 1907; re-en. Sec. 5966, R. C. M. 1921. Cal. Civ. C. Sec. 322.

Operation and Effect

In the case of *Kelly v. Clark*, 21 M 291, 53 P 959 and *King v. Pony Gold Min. Co.*, 28 M 74, 72 P 309, this court construed this statute imposing liability upon stockholders "until the whole amount of the capital stock subscribed for shall be paid in" as imposing a liability secondary to that of the company for its debts, and held that the remedy against the stockholders did not accrue until the remedy against the company had been exhausted. *Mitchell v. Banking Corporation of Mont.*, 83 M 581, 597, 273 P 1055.

References

Cited or applied as section 457, Fifth Division Compiled Statutes of 1887, in *Kelly v. Clark*, 21 M 291, 53 P 959; *Kirkup v. Anaconda Amusement Co.*, 59 M 469, 485, 197 P 1005.

Collateral References

Corporations—228.
18 C.J.S. Corporations § 584.
13 Am. Jur. 544, Corporations, §§ 510 et seq.

Liability of one whose name appears upon corporate books as a stockholder without his consent. 3 ALR 1049.

Creditor's knowledge that stock is unpaid as affecting stockholders' liability. 7 ALR 972.

Personal liability of officers or stockholders for debts of corporation which has made an unauthorized change in its name. 8 ALR 583.

Liability as on unpaid subscription, of transferees of stock issued in exchange for property or services at an overvaluation. 12 ALR 449.

Statutory liability of stockholder for tort of corporation. 14 ALR 267.

Liability to creditors of stockholders whose stock is forfeited or sold for non-payment of assessments. 19 ALR 1096.

Liability of transferrer of corporate stock for calls or assessments as affected by insolvency, fraud, or illegality in transfer. 45 ALR 99.

Personal liability of stockholder, officer, or agent for debt of foreign corporation doing business in the state. 51 ALR 376.

Liability of stockholder as affected by business of corporation being turned over to an officer of the court or other person. 55 ALR 327.

Sale, or surrender of stock for sale, to pay assessment, as relieving stockholder from further liability. 66 ALR 436.

Liability of stockholder of one purchasing stock for, or transferring stock to, infant. 69 ALR 661.

Liability of pledgee of stock as shareholder. 82 ALR 565.

Liability on stock held by one as trustee or in other fiduciary capacity. -91 ALR 257.

Statutory liability of stockholder of bank or other corporation as affected by change in or renewal of corporation's obligation. 97 ALR 630.

Stockholders' statutory liabilities as affected by alleged defects or irregularities in organization of corporation. 102 ALR 327.

Issuance by corporation of new stock certificates without requiring surrender of old. 150 ALR 148.

Stockholders' statutory liability as affected by fact that stock is in name of holding company. 151 ALR 1165.

15-616. (5967) Payment for subscribed stock. It shall be lawful for the directors to call in and demand from the stockholders, respectively, all such sums of money by them subscribed, at such times and in such payments or instalments as the directors shall deem proper, not to exceed twenty per cent in any one month, under the penalty of forfeiting the shares of stock subscribed for, and all previous payments made thereon, if payment shall not be made by the stockholders within sixty days after a personal demand or notice requiring such payment shall have been published for six successive weeks in the newspaper nearest the place where the business of the company shall be carried on as aforesaid.

History: En. Sec. 452, Civ. C. 1895; 13 Am. Jur. 369, Corporations, §§ 265 et seq.
 re-en. Sec. 3851, Rev. C. 1907; re-en. Sec. 5967, R. C. M. 1921.

Collateral References

Corporations 99.

18 C.J.S. Corporations § 342 et seq.

Statutory requirements respecting payment for stock as applicable to foreign corporations. 8 ALR 2d 1185.

15-617. (5968) Promissory notes in payment of shares of stock. Every promissory note given in payment, or in part payment of, or as evidence of a promise to pay for any shares of stock in any corporation subscribed for by the maker of such note, shall be made payable to the corporation issuing the stock so subscribed for, or to the officer or agent of such corporation through whom such stock is to be delivered to the maker of such note, and shall have written or printed across the face thereof the following words:

"Subscription note for (state number) shares of the capital stock of (state name of corporation)," and every corporation, or officer or agent thereof, accepting or receiving any such note made payable to any person other than the corporation issuing such stock, or to the officer or agent of such corporation through whom such stock is to be delivered to the maker of the note, or accepting or receiving any such note without such words being written or printed across the face thereof, shall be deemed guilty of a misdemeanor, and, upon conviction thereof, shall be punished by a fine of not less than one hundred dollars nor more than one thousand dollars, or by imprisonment in the county jail not exceeding six months, or by both such fine and imprisonment.

History: En. Sec. 1, Ch. 121, L. 1919;
 re-en. Sec. 5968, R. C. M. 1921.

Collateral References

Corporations 92.

18 C.J.S. Corporations § 310.

13 Am. Jur. 322, Corporations, §§ 208 et seq.

Note as consideration for issuance of corporate stock. 58 ALR 708.

Right of corporation to deny validity of

stock issued by it in violation of statutory or constitutional provisions, respecting receipt of consideration, as against subsequent bona fide purchasers or pledgees for value. 73 ALR 1435.

Assumption of payment or guaranty of corporation's indebtedness as consideration for transfer of its stock. 103 ALR 1417.

Enforcement of stock subscription after stock on note of subscriber is barred by statute of limitations. 11 ALR 2d 1380.

15-618. (5969) Same — defenses available in action on. If any such stock subscription note shall be assigned or transferred by the payee named therein to any person, association, or corporation, the maker thereof, in any action instituted to collect the same, or any part thereof, shall have the right to interpose any and all defenses which such maker might have interposed if such action had been instituted by the payee named therein.

History: En. Sec. 2, Ch. 121, L. 1919;
 re-en. Sec. 5969, R. C. M. 1921.

15-619. (5970) Stock issued for purchase of property. The directors of any corporation may purchase mines, manufactories, and other property necessary for its business, and issue stock to the amount of the value thereof in payment therefor, and the stock so issued shall be declared and taken to be full paid stock and not liable to any further call, neither shall the holders thereof be liable for any further payments under the provisions of section 15-615 of this code; provided, that on mines any arbitrary value may be fixed and such value shall, regardless of the actual value, be

deemed the value thereof, so as to make the stock issued in payment therefor at such arbitrary value full paid stock as above defined, and wherever stock has been heretofore issued by corporations in payment for mines purchased by it, such stock so issued shall be deemed full paid stock, regardless of the actual value of the mine at the time of such purchase. In all statements and reports of the corporation to be published, this stock shall not be stated or reported as being issued for cash paid into the corporation, but shall be reported in this respect according to the facts.

History: Ap. p. Sec. 13, p. 27, L. 1867; re-en. Sec. 13, p. 408, Cod. Stat. 1871; re-en. Sec. 256, 5th Div. Rev. Stat. 1879; amd. Sec. 458, 5th Div. Comp. Stat. 1887; amd. Sec. 410, Civ. C. 1895; re-en. Sec. 3824, Rev. C. 1907; re-en. Sec. 5970, R. C. M. 1921.

Operation and Effect

This section is direct authority for the receipt, by a domestic corporation, of mines, manufactories, and other like property in payment of the capital stock, and such stock shall be deemed fully paid-up stock; it tends, with other provisions of the law, to show that the capital stock of a foreign corporation may consist, in whole or in part, of something

other than money. *State v. Clements*, 37 M 314, 319, 96 P 498.

There can be no presumption that the capital stock of a corporation shall be deemed to be paid for in money. *State v. Clements*, 37 M 314, 319, 96 P 498.

References

Cited or applied as section 458, Fifth Division Compiled Statutes of 1887, in *Kelly v. Clark*, 21 M 291, 53 P 959.

Collateral References

Corporations ¶99(2) et seq.; *Mines and Minerals* ¶104.

18 C.J.S. *Corporations* § 241; 58 C.J.S. *Mines and Minerals* § 256.

13 Am. Jur. 326, *Corporations*, § 214.

15-620. (5971) Acquisition of stock or securities of other corporations.

Any corporation, formed under the laws of the territory or state of Montana, whether previous to or since the taking effect of the codes on July 1, 1895, or hereafter to be formed, may purchase or otherwise acquire, own, hold, mortgage, pledge, sell, assign, transfer, or otherwise dispose of shares of the capital stock of, or any bonds, securities, or other evidence of indebtedness created by any other corporation or corporations, wherever formed or organized, and while such owner may exercise all the rights, powers, and privileges of ownership, including the right to vote upon such stock; provided, however, that it is not intended hereby to give the right to exercise any of the powers or purposes in this section mentioned in any case where it is forbidden so to do by any provision of the constitution or statutes of the United States of America or the state of Montana.

History: En. Sec. 4, Ch. 106, L. 1909; re-en. Sec. 5971, R. C. M. 1921.

Operation and Effect

The only provisions looking to the merger of corporations are found in section 15-1603 and this section, authorizing

one corporation to acquire shares of stock in another. *United Missouri River Power Co. v. Yoder*, 41 M 245, 247, 108 P 912.

Collateral References

Corporations ¶377.

19 C.J.S. *Corporations* § 951.

15-621. (5971.1) Determination of stock ownership previous to payment of dividends or other corporate procedure. That any corporation heretofore or hereafter organized under any of the laws of Montana, whether formed and existing before or after the taking effect of the Codes on July 1, 1895, shall have power, by action of its board of directors, to close the stock transfer books of the corporation for a period not exceeding forty (40) days preceding the date for the payment of any dividend, or the date for the allotment of rights, or the date when any change or conversion or exchange

of capital stock shall go into effect, or the date for any other corporate action or proceeding; provided, however, that in lieu of closing the stock transfer books as aforesaid, the by-laws may fix, or authorize the board of directors to fix, in advance, a date, not exceeding forty (40) days preceding the date of the payment of any dividend, or the date for the allotment of rights, or the date when any change or conversion or exchange of capital stock shall go into effect, or the date for any other corporate action or proceeding, as a record date for the determination of the stockholders entitled to receive payment of any such dividend, or any such allotment of rights, or to exercise the rights in respect of any such change or conversion or exchange of capital stock, or entitled to participate in or benefit by such other corporate action or proceeding, and, in such case, such stockholders, and only such stockholders, as shall be stockholders of record on the date so fixed, shall be entitled to receive payment of such dividend, or to receive such allotment of rights, or to exercise such rights of change or conversion or exchange of stock, or to participate in or benefit by such other corporate action or proceeding, notwithstanding any transfer of any stock on the books of the corporation, after any such record date fixed as aforesaid.

History: En. Sec. 1, Ch. 45, L. 1931.

Collateral References

Corporations 113.

18 C.J.S. Corporations § 391.

15-622. (5971.2) Issuance of non par stock authorized—provisions concerning. Every corporation organized or hereafter to be organized under the general incorporation laws of the state of Montana (excepting banks, trust companies, and building and loan companies) shall have power to issue, and may provide for the issuance, of one or more classes of stock or one or more series of stock within any class thereof, without any nominal or par value, any or all of which classes or series may be of such number of shares, with such designations, preferences and relative, participating, optional or other special rights, and qualifications, limitations or restrictions thereof, as shall be stated and expressed in the articles of incorporation or in any amendment thereto.

In any case in which the law requires to be stated in any articles, certificate or paper the amount of capital authorized, issued, outstanding or with which the corporation will commence business, the par value of shares or the amount of the subscriptions of the incorporators thereof, there shall be stated in respect of such nominal or non par shares, the number of such shares authorized, issued, outstanding or with which the corporation will commence business, that such shares are without par value, or the number of such shares subscribed for by the incorporators, as the case may be, and in cases where original or amended articles of incorporation provide only for shares without nominal or par value, such statement shall be in lieu of all requirements relating to amounts of authorized capital stock or amounts with which corporations may commence business.

The power to increase or decrease or otherwise adjust the capital stock as elsewhere provided shall apply to all or any of such classes or series of stock, provided that nothing herein contained shall be construed to prevent any corporation subject to this act from authorizing or issuing both

stock with par value and stock without par value, and increasing, decreasing or adjusting either or both.

History: En. Sec. 1, Ch. 116, L. 1931.

13 Am. Jur. 303, Corporations, § 178.

Collateral References

Corporations—66, 67, 70, 71.

Corporate stock without par value. 19 ALR 131.

18 C.J.S. Corporations §§ 196, 201, 222, 268, 272, 275.

15-623. (5971.3) Sale of non par stock—consent of stockholders—fully paid and nonassessable nature of non par stock. Every corporation subject to this act may issue and may sell its authorized shares without nominal or par value, from time to time, for such consideration (a) as may be prescribed in the articles of incorporation or any amendment thereof, or, if so provided in the articles of incorporation (b) as from time to time may be fixed by the board of directors, or if no such provision is made in the articles of incorporation, (c) then with the consent of two-thirds of each class of stockholders having voting powers given at a meeting called for that purpose. Such meeting shall be held on such notice as the by-laws provide, and in the absence of such provision upon ten days' notice given personally or by mail, or upon written consent of all stockholders. Any and all shares without nominal or par value issued as permitted by this act, shall be deemed fully paid and nonassessable, and the holder of such shares shall not be liable to the corporation or its creditors in respect thereof.

History: En. Sec. 2, Ch. 116, L. 1931.

18 C.J.S. Corporations §§ 194, 196, 198, 201, 222, 486.

Collateral References

Corporations—62, 70, 71, 89, 99(1), 175.

15-624. (5971.4) Equality of non par shares—statements on certificates. Every share of stock without nominal or par value shall be equal to every other share of such stock of the same class or series, and shall rank as respects any other classes or series of stock according to the preferences given each and every class or series under the terms of this act. Every certificate for such shares without nominal or par value shall have plainly written or printed upon its face the number of such shares which it represents and the words "No-Par Stock," and on the reverse side thereof shall set forth in full or accurately summarize the rights and privileges, if any, given to such shares, and no such certificate shall express any nominal or par value of such shares.

History: En. Sec. 3, Ch. 116, L. 1931.

Collateral References

Corporations—95, 174.

18 C.J.S. Corporations §§ 262, 477.

15-625. (5971.5) Fees applicable to non par stock—value for figuring fees. Corporations exercising any privileges under this act shall be subject to and must pay all fees prescribed by section 25-102 of these codes, in all cases in which such corporations authorize stock with par value, and in all cases in which such corporations exercising privileges hereunder authorize stock without nominal or par value, whether in whole or in part, such corporations must pay (in addition to any fees for stock with par value actually authorized) the fees prescribed by said section 25-102, computed as follows: for the purpose of the fees prescribed to be paid on the filing of any articles

of incorporation, certificate of incorporation, or certificate of increase of capital or stock, but for no other purpose whatever, such shares without nominal or par value shall be taken to be of the par value of one dollar (\$1.00) each.

History: En. Sec. 4, Ch. 116, L. 1931.

18 C.J.S. Corporations § 67.

Collateral References
Corporations 19.

Fees on corporate stock without par value. 36 ALR 791, 794.

15-626. (5971.6) Provision concerning non par stock additional to other laws. The privileges and powers conferred by this act shall be deemed to be in addition to and supplemental of, any and all powers and authority conferred by any other law or laws, and not in restriction or limitation of any of the powers now permitted to corporations incorporated under the general incorporation laws of this state.

History: En. Sec. 5, Ch. 116, L. 1931.

18 C.J.S. Corporations § 41; 19 C.J.S. Corporations § 933.

Collateral References
Corporations 13.

15-627. (5972) Anti-trust law continued in force. Nothing herein contained shall be construed as repealing any of the provisions of chapter 97, Laws of 1909, of the eleventh legislative assembly (sections 94-1104 to 94-1106), known as the anti-trust law.

History: En. Sec. 5, Ch. 106, L. 1909;
re-en. Sec. 5972, R. C. M. 1921.

Collateral References

Monopolies 10.

56 C.J.S. Monopolies § 27.

15-628. How title to certificates and shares may be transferred. Title to a certificate and to the shares represented thereby can be transferred only,

(a) By delivery of the certificate indorsed either in blank or to a specified person by the person appearing by the certificate to be the owner of the shares represented thereby, or

(b) By delivery of the certificate and a separate document containing a written assignment of the certificate or a power of attorney to sell, assign, or transfer the same or the shares represented thereby, signed by the person appearing by the certificate to be the owner of the shares represented thereby. Such assignment or power of attorney may be either in blank or to a specified person, or

(c) By delivery of the certificate with an assignment endorsed thereon or in a separate instrument signed by the trustee in bankruptcy, receiver, guardian, executor, administrator or other person duly authorized by law to transfer the certificate on behalf of the person appearing by the certificate to be the owner of the shares represented thereby.

History: En. Sec. 1, Ch. 115, L. 1943.

Delivery of Shares

NOTE.—Uniform State Law, sections 15-628 through 15-651 constitute the "Uniform Stock Transfer Act" approved by the National Conference of Commissioners on Uniform State Laws in 1909 and adopted in all the states of the United States except Pennsylvania and also in Alaska, the District of Columbia and Hawaii.

In suit to determine rights of respective administrators of estates of husband and wife, who had been killed in automobile accident, to unindorsed stock certificate in maiden name of wife, evidence of the finding of such unindorsed stock certificate in the joint safety deposit box of both husband and wife together with a separate

assignment of the stock certificate to the husband signed by the wife, did not show a delivery to the husband so as to pass title. *Lyons v. Freshman*, 124 M 485, 226 P 2d 775, 23 ALR 2d 1165.

18 C.J.S. Corporations § 392.

Remedy for refusal of corporation or its agent to register or effectuate transfer of stock. 22 ALR 2d 12.

Collateral References

Corporations—114.

15-629. Powers of those lacking full legal capacity and of fiduciaries not enlarged. Nothing in this act shall be construed as enlarging the powers of an infant or other person lacking full legal capacity, or of a trustee, executor or administrator, or other fiduciary, to make a valid indorsement, assignment or power of attorney.

History: En. Sec. 2, Ch. 115, L. 1943.

15-630. Corporation not forbidden to treat registered holder as owner. Nothing in this act shall be construed as forbidding a corporation,

(a) To recognize the exclusive right of a person registered on its books as the owner of shares to receive dividends, and to vote as such owner, or

(b) To hold liable for calls and assessments a person registered on its books as the owner of shares.

History: En. Sec. 3, Ch. 115, L. 1943.

15-631. Title derived from certificate extinguishes title derived from a separate document. The title of a transferee of a certificate under a power of attorney or assignment not written upon the certificate, and the title of any person claiming under such transferee, shall cease and determine if, at any time prior to the surrender of the certificate to the corporation issuing it, another person, for value in good faith, and without notice of the prior transfer, shall purchase and obtain delivery of such certificate with the indorsement of the person appearing by the certificate to be the owner thereof, or shall purchase and obtain delivery of such certificate and the written assignment or power of attorney of such person, though contained in a separate document.

History: En. Sec. 4, Ch. 115, L. 1943.

15-632. Who may deliver a certificate. The delivery of a certificate to transfer title in accordance with the provisions of section 15-628, is effectual, except as provided in section 15-634, though made by one having no right of possession and having no authority from the owner of the certificate or from the person purporting to transfer the title.

History: En. Sec. 5, Ch. 115, L. 1943.

15-633. Indorsement effectual in spite of fraud, duress, mistake, revocation, death, incapacity or lack of consideration or authority. The indorsement of a certificate by the person appearing by the certificate to be the owner of the shares represented thereby is effectual, except as provided in section 15-634, though the indorser or transferor,

(a) Was induced by fraud, duress or mistake, to make the indorsement or delivery, or

(b) Has revoked the delivery of the certificate, or the authority given by the indorsement or delivery of the certificate, or

(c) Has died or become legally incapacitated after the indorsement, whether before or after the delivery of the certificate, or

(d) Has received no consideration.

History: En. Sec. 6, Ch. 115, L. 1943.

15-634. Rescission of transfer. If the indorsement or delivery of a certificate,

(a) Was procured by fraud or duress, or

(b) Was made under such mistake as to make the indorsement or delivery inequitable; or

If the delivery of a certificate was made

(c) Without authority from the owner, or

(d) After the owner's death or legal incapacity, the possession of the certificate may be reclaimed and the transfer thereof rescinded, unless:

(1) The certificate has been transferred to a purchaser for value in good faith without notice of any facts making the transfer wrongful, or,

(2) The injured person has elected to waive the injury, or has been guilty of laches in endeavoring to enforce his rights.

Any court of appropriate jurisdiction may enforce specifically such right to reclaim the possession of the certificate or to rescind the transfer thereof and, pending litigation, may enjoin the further transfer of the certificate or impound it.

History: En. Sec. 7, Ch. 115, L. 1943.

15-635. Rescission of transfer of certificate does not invalidate subsequent transfer by transferee in possession. Although the transfer of a certificate or of shares represented thereby has been rescinded or set aside, nevertheless, if the transferee has possession of the certificate or of a new certificate representing part or the whole of the same shares of stock, a subsequent transfer of such certificate by the transferee, mediately or immediately, to a purchaser for value in good faith, without notice of any facts making the transfer wrongful, shall give such purchaser an indefeasible right to the certificate and the shares represented thereby.

History: En. Sec. 8, Ch. 115, L. 1943.

15-636. Delivery of unindorsed certificate imposes obligation to indorse. The delivery of a certificate by the person appearing by the certificate to be the owner thereof without the indorsement requisite for the transfer of the certificate and the shares represented thereby, but with intent to transfer such certificate or shares, shall impose an obligation, in the absence of an agreement to the contrary, upon the person so delivering, to complete the transfer by making the necessary indorsement. The transfer shall take effect as of the time when the indorsement is actually made. This obligation may be specifically enforced.

History: En. Sec. 9, Ch. 115, L. 1943.

15-637. Ineffectual attempt to transfer amounts to a promise to transfer. An attempted transfer of title to a certificate or to the shares represented thereby without delivery of the certificate shall have the effect of a promise

to transfer and the obligation, if any, imposed by such promise shall be determined by the law governing the formation and performance of contracts.

History: En. Sec. 10, Ch. 115, L. 1943.

15-638. Warranties on sale of certificate. A person who for value transfers a certificate, including one who assigns for value a claim secured by a certificate, unless a contrary intention appears, warrants—

- (a) That the certificate is genuine,
- (b) That he has a legal right to transfer it, and
- (c) That he has no knowledge of any fact which would impair the validity of the certificate.

In the case of an assignment of a claim secured by a certificate, the liability of the assignor upon such warranty shall not exceed the amount of the claim.

History: En. Sec. 11, Ch. 115, L. 1943.

15-639. No warranty implied from accepting payment of a debt. A mortgagee, pledgee, or other holder for security of a certificate who in good faith demands or receives payment of the debt for which such certificate is security, whether from a party to a draft drawn for such debt, or from any other person, shall not by so doing be deemed to represent or to warrant the genuineness of such certificate, or the value of the shares represented thereby.

History: En. Sec. 12, Ch. 115, L. 1943.

15-640. Attachment or levy upon shares—how accomplished—surrender—enjoinment. Any attachment or levy upon shares of stock for which a certificate is outstanding, or upon any interest in such shares, may be accomplished by any of the following methods,

- (a) By the officer making the attachment or levy actually seizing the certificate or
- (b) By the officer making the attachment or levy leaving with the president, or other head of the corporation or company, or the secretary, cashier, or other managing agent thereof, a copy of the writ, and a notice stating that the stock or interest of the defendant is attached or levied upon in pursuance of such writ, and also
- (c) By the surrender of the certificate to the corporation which issued it in subjection to the attachment or levy, or
- (d) By enjoining the transfer of the certificate by the holder. Except where a certificate is lost or destroyed, such corporation shall not be compelled to issue a new certificate for the stock until the old certificate is surrendered to it.

History: En. Sec. 13, Ch. 115, L. 1943.

Execution on stock, how levied, sec. 93-5810.

Cross-References

Attachment of corporate stock, secs. 93-4306 to 93-4309.

15-641. Creditor's remedies to reach certificate. A creditor whose debtor is the owner of a certificate shall be entitled to such aid from courts of appropriate jurisdiction, by injunction and otherwise, in attaching such certificate or in satisfying the claim by means thereof as is allowed at law

or in equity, in regard to property which cannot readily be attached or levied upon by ordinary legal process.

History: En. Sec. 14, Ch. 115, L. 1943.

15-642. There shall be no lien or restriction unless indicated on certificate. There shall be no lien in favor of a corporation upon the shares represented by a certificate issued by such corporation and there shall be no restriction upon the transfer of shares so represented by virtue of any by-laws of such corporation, or otherwise, unless the right of the corporation to such lien or the restriction is stated upon the certificate.

History: En. Sec. 15, Ch. 115, L. 1943.

15-643. Alteration of certificate does not divest title to shares. The alteration of a certificate, whether fraudulent or not and by whomsoever made, shall not deprive the owner of his title to the certificate and the shares originally represented thereby, and the transfer of such a certificate shall convey to the transferee a good title to such certificate and to the shares originally represented thereby.

History: En. Sec. 16, Ch. 115, L. 1943.

15-644. Lost or destroyed certificate. Where a certificate has been lost or destroyed, a court of competent jurisdiction may order the issue of a new certificate therefor on service of process upon the corporation and on reasonable notice by publication, and in any other way which the court may direct, to all persons interested, and upon satisfactory proof of such loss or destruction and upon the giving of a bond with sufficient surety to be approved by the court to protect the corporation or any person injured by the issue of the new certificate from any liability or expense, which it or they may incur by reason of the original certificate remaining outstanding. The court may also in its discretion order the payment of the corporation's reasonable costs and counsel fees.

The issue of a new certificate under an order of the court as provided in this section, shall not relieve the corporation from liability in damages to a person to whom the original certificate has been or shall be transferred for value without notice of the proceedings or of the issuance of the new certificate.

History: En. Sec. 17, Ch. 115, L. 1943.

15-645. Rule for cases not provided for by this act. In any case not provided for by this act, the rules of law and equity, including the law merchant, and in particular the rules relating to the law of principal and agent, executors, administrators and trustees, and to the effect of fraud, misrepresentation, duress or coercion, mistake, bankruptcy, or other invalidating cause, shall govern.

History: En. Sec. 18, Ch. 115, L. 1943.

15-646. Interpretation shall give effect to purpose of uniformity. This act shall be so interpreted and construed as to effectuate its general purpose to make uniform the law of those states which enact it.

History: En. Sec. 19, Ch. 115, L. 1943.

15-647. Definition of indorsement. A certificate is indorsed when an assignment or a power of attorney to sell, assign, or transfer the certificate or the shares represented thereby is written on the certificate and signed by the person appearing by the certificate to be the owner of the shares represented thereby, or when the signature of such person is written without more upon the back of the certificate. In any of such cases a certificate is indorsed though it has not been delivered.

History: En. Sec. 20, Ch. 115, L. 1943.

15-648. Definition of person appearing to be the owner of certificate. The person to whom a certificate was originally issued is the person appearing by the certificate to be the owner thereof, and of the shares represented thereby, until and unless he indorses the certificate to another specified person, and thereupon such other specified person is the person appearing by the certificate to be the owner thereof until and unless he also indorses the certificate to another specified person. Subsequent special indorsements may be made with like effect.

History: En. Sec. 21, Ch. 115, L. 1943.

15-649. Other definitions. (1) In this act, unless the context or subject matter otherwise requires—

“Certificate” means a certificate for shares in a domestic or foreign corporation.

“Delivery” means voluntary transfer of possession from one person to another.

“Person” includes a corporation or partnership or two or more persons having a joint or common interest.

To “purchase” includes to take as mortgagee or as pledgee.

“Purchaser” includes mortgagee and pledgee.

“Shares” means a share or shares of stock in a domestic or foreign corporation.

“State” includes state, territory, district and insular possession of the United States.

“Transfer” means transfer of legal title.

“Title” means legal title and does not include a merely equitable or beneficial ownership or interest.

“Value” is any consideration sufficient to support a simple contract. An antecedent or pre-existing obligation, whether for money or not, constitutes value where a certificate is taken either in satisfaction thereof or as security therefor.

(2) A thing is done “in good faith” within the meaning of this act, when it is in fact done honestly, whether it be done negligently or not.

History: En. Sec. 22, Ch. 115, L. 1943.

Delivery of Shares

In suit to determine rights of respective administrators of estates of husband and wife, who had been killed in automobile accident, to unindorsed stock certificate in maiden name of wife, evidence of the

finding of such unindorsed stock certificate in the joint safety deposit box of both husband and wife together with a separate assignment of the stock certificate to the husband signed by the wife, did not show a delivery to the husband so as to pass title. *Lyons v. Freshman*, 124 M 485, 226 P 2d 775, 23 ALR 2d 1165.

15-650. The application of the transfer act. The provisions of the transfer act shall apply to certificates for shares issued after the taking effect of the transfer act, and to transfers made in this state whether of certificates for shares of domestic or foreign corporations, and also, so far as applicable, to voting trust certificates and stock purchase or subscription warrants which shall be transferable in the same manner and with the same effect as certificates for shares.

History: En. Sec. 23, Ch. 115, L. 1943.

15-651. Name of act. This act may be cited as the uniform stock transfer act.

History: En. Sec. 26, Ch. 115, L. 1943.

CHAPTER 7

ASSESSMENTS

- Section 15-701. Directors may levy assessment.
 15-702. Limitation upon amount of assessment.
 15-703. Levy of assessment—unpaid assessment.
 15-704. Contents of order for assessment.
 15-705. Notice of assessment—form.
 15-706. Publication and service of notice.
 15-707. Delinquent notice—form.
 15-708. Contents of notice.
 15-709. How published.
 15-710. Jurisdiction acquired by publication of notice.
 15-711. Sale to be at public auction.
 15-712. Highest bidder to be the purchaser.
 15-713. Corporation may purchase in default of bidder.
 15-714. Disposition of stock purchased by corporation.
 15-715. Extension of time of delinquent sale.
 15-716. Assessment shall not be invalidated.
 15-717. Action for recovery of stock—limitation thereon.
 15-718. Proofs of publication and sale.
 15-719. Waiver of sale—action to recover assessment.
 15-720. To what corporations applicable.
 15-721. Other corporations may make stock assessable.

15-701. (5973) Directors may levy assessment. The directors of any corporation formed or existing under the laws of this state, may, for the purposes of paying expenses, conducting business, or paying debts, levy and collect assessments upon the subscribed capital stock thereof, in the manner and form and to the extent provided herein.

History: En. in substance as Sec. 1, p. 84, L. 1883; re-en. Sec. 496, 5th Div. Comp. Stat. 1887; re-en. in present form as Sec. 490, Civ. C. 1895; re-en. Sec. 3867, Rev. C. 1907; re-en. Sec. 5973, R. C. M. 1921. Cal. Civ. C. Sec. 331.

References

Cited or applied as section 3867, Revised Codes, in *Enterprise Sheet Metal Works v. Schendel*, 55 M 42, 52, 173 P 1059.

Collateral References

Corporations \S 89(1), 175.
 18 C.J.S. Corporations $\S\S$ 353, 486.
 13 Am. Jur. 368, Corporations, $\S\S$ 271-278.

Failure to enter transfer of stock on corporate books as affecting liability of transferor for calls or assessments. 45 ALR 137.

Sale, or surrender of stock for sale, to pay assessment, as relieving stockholder from further liability. 66 ALR 436.

15-702. (5974) Limitation upon amount of assessment. No one assessment must exceed five per cent of the amount of the capital stock named

in the articles of incorporation, except that if the whole capital stock of a corporation has not been paid up, and the corporation is unable to meet its liabilities or to satisfy the claims of its creditors, the assessment may be for the full amount unpaid upon the capital stock; or, if a less amount is sufficient, then it may be for such a percentage as will raise that amount.

History: En. in substance as Sec. 2, p. 84, L. 1883; re-en. Sec. 497, 5th Div. Comp. Stat. 1887; re-en. in present form as Sec. 491, Civ. C. 1895; re-en. Sec. 3868, Rev. C. 1907; re-en. Sec. 5974, R. C. M. 1921. Cal. Civ. C. Sec. 332.

Collateral References

Corporations—89(4), 175.
18 C.J.S. Corporations §§ 346, 486.
13 Am. Jur. 369, Corporations, § 275.

15-703. (5975) Levy of assessment—unpaid assessment. No assessment must be levied while any portion of a previous one remains unpaid, unless:

1. The power of the corporation has been exercised in accordance with the provisions of this chapter for the purpose of collecting such previous assessment;

2. The collection of the previous assessment has been enjoined; or,

3. The assessment falls within the provisions of the preceding section.

History: En. in substance as Sec. 3, p. 84, L. 1883; re-en. Sec. 498, 5th Div. Comp. Stat. 1887; re-en. in present form as Sec.

492, Civ. C. 1895; re-en. Sec. 3869, Rev. C. 1907; re-en. Sec. 5975, R. C. M. 1921. Cal. Civ. C. Sec. 333.

15-704. (5976) Contents of order for assessment. Every order levying an assessment must specify the amount thereof, when, to whom, and where payable; fix a day, subsequent to the full term of publication of the assessment notice, on which the unpaid assessment shall be delinquent, not less than thirty nor more than sixty days from the time of making the order levying the assessment, and a day for the sale of delinquent stock, not less than fifteen nor more than sixty days from the day the stock is declared delinquent.

History: En. in substance as Sec. 4, p. 84, L. 1883; re-en. Sec. 499, 5th Div. Comp. Stat. 1887; re-en. in present form as Sec. 493, Civ. C. 1895; re-en. Sec. 3870, Rev. C. 1907; re-en. Sec. 5976, R. C. M. 1921. Cal. Civ. C. Sec. 334.

Collateral References

Corporations—89(1), 175.
18 C.J.S. Corporations §§ 344, 486.

15-705. (5977) Notice of assessment—form. Upon the making of the order the secretary shall cause to be published a notice thereof in the following form:

(Name of corporation in full. Location of the principal place of business.) Notice is hereby given, that at a meeting of the directors, held on the (date), an assessment of (amount) per share was levied upon the capital stock of the corporation, payable (when, to whom, and where). Any stock upon which the assessment shall remain unpaid on the (day fixed) will be delinquent and advertised for sale at public auction, and, unless payment is made before, will be sold on the (day appointed), to pay the delinquent assessment, together with costs of advertising and expenses of sale.

(Signature of secretary, with location of office.)

History: En. in substance as Sec. 5, p. 85, L. 1883; re-en. Sec. 500, 5th Div. Comp. Stat. 1887; re-en. in present form as Sec.

494, Civ. C. 1895; re-en. Sec. 3871, Rev. C. 1907; re-en. Sec. 5977, R. C. M. 1921. Cal. Civ. C. Sec. 335.

Collateral References
Corporations—89(2).

18 C.J.S. Corporations § 359.
13 Am. Jur. 370, Corporations, § 278.

15-706. (5978) Publication and service of notice. The notice must be personally served upon each stockholder, or, in lieu of personal service, must be sent within ten days after the assessment through the mail, addressed to each stockholder at his place of residence, if known, and if not known, at the place where the principal office of the corporation is situated, and be published once a week, for four successive weeks, in some newspaper of general circulation and devoted to the publication of general news, at the place designated in the articles of incorporation as the principal place of business, and also in some newspaper published in the county in which the works of the corporation are situated, if a paper be published therein. If the works of the corporation are not within a state or territory of the United States, publication in a paper of the place where they are situated is not necessary. If there be no newspaper published at the place designated as the principal place of business of the corporation, then the publication must be made in some other newspaper of the county, if there be one, and if there be none, then in a newspaper published in an adjoining county.

History: En. in substance as Sec. 6, p. 495, Civ. C. 1895; re-en. Sec. 3872, Rev. C. 85, L. 1883; re-en. Sec. 501, 5th Div. Comp. 1907; re-en. Sec. 5978, R. C. M. 1921. Cal. Stat. 1887; re-en. in present form as Sec. Civ. C. Sec. 336.

15-707. (5979) Delinquent notice—form. If any portion of the assessment mentioned in the notice remains unpaid on the days specified therein for declaring the stock delinquent, the secretary, unless otherwise ordered by the board of directors, shall cause to be published in the same papers in which the notice hereinbefore provided for shall have been published, a notice substantially in the following form:

(Name in full. Location of principal place of business.) Notice.—There is delinquent upon the following subscribed stock, on account of assessment levied on the (date), (and assessments levied previous thereto, if any), the several amounts set opposite the names of respective shareholders as follows: (Names, number of certificate, number of shares, amounts.) And in accordance with law (and an order of the board of directors, made on the (date), if such order shall have been made), so many shares of each parcel of stock as may be necessary, will be sold at the (particular place), on the (date), at (the hour) of such day, to pay delinquent assessments thereon, together with costs of advertising and expenses of sale.

(Name of secretary, with location of office.)

History: En. in substance as Sec. 7, p. 496, Civ. C. 1895; re-en. Sec. 3873, Rev. C. 85, L. 1883; re-en. Sec. 502, 5th Div. Comp. 1907; re-en. Sec. 5979, R. C. M. 1921. Cal. Stat. 1887; re-en. in present form as Sec. Civ. C. Sec. 337.

15-708. (5980) Contents of notice. The notice must specify every certificate of stock, the number of shares it represents, and the amount due thereon, except where certificates may not have been issued to parties entitled thereto, in which case the number of shares and amount due thereon, together with the fact that the certificates for such shares have not been issued, must be stated.

History: En. in substance as Sec. 8, p. 497, Civ. C. 1895; re-en. Sec. 3874, Rev. C. 85, L. 1883; re-en. Sec. 503, 5th Div. Comp. 1907; re-en. Sec. 5980, R. C. M. 1921. Cal. Stat. 1887; re-en. in present form as Sec. Civ. C. Sec. 338.

15-709. (5981) How published. The notice, when published in a daily paper, must be published for ten days, excluding Sundays and holidays, previous to the day of sale. When published in a weekly paper, it must be published in each for two weeks previous to the day of sale. The first publication of all delinquent sales must be at least fifteen days prior to the day of sale.

History: En. in substance as Sec. 9, p. 498, Civ. C. 1895; re-en. Sec. 3875, Rev. C. 86, L. 1883; re-en. Sec. 504, 5th Div. Comp. 1907; re-en. Sec. 5981, R. C. M. 1921. Cal. Stat. 1887; re-en. in present form as Sec. Civ. C. Sec. 339.

15-710. (5982) Jurisdiction acquired by publication of notice. By the publication of the notice, the corporation acquires jurisdiction to sell and convey a perfect title to all of the stock described in the notice of sale upon which any portion of the assessment or costs of advertising remains unpaid at the hour appointed for the sale, but must sell no more of such stock than is necessary to pay the assessment due and costs of sale.

History: En. in substance as Sec. 10, p. 499, Civ. C. 1895; re-en. Sec. 3876, Rev. C. 86, L. 1883; re-en. Sec. 505, 5th Div. Comp. 1907; re-en. Sec. 5982, R. C. M. 1921. Cal. Stat. 1887; re-en. in present form as Sec. Civ. C. Sec. 340.

15-711. (5983) Sale to be at public auction. On the day, at the place, and at the time appointed in the notice of sale, the secretary must, unless otherwise ordered by the board of directors, sell or cause to be sold at public auction, to the highest bidder for cash, so many shares of each parcel of the described stock as may be necessary to pay the assessment and charges thereon, according to the terms of sale; if payment is made before the time fixed for sale, the party paying is only required to pay the actual cost of advertising, in addition to the assessment.

History: En. in substance as Sec. 11, p. 86, L. 1883; re-en. Sec. 506, 5th Div. Comp. Stat. 1887; re-en. in present form as Sec. 500, Civ. C. 1895; re-en. Sec. 3877, Rev. C. 1907; re-en. Sec. 5983, R. C. M. 1921. Cal. Civ. C. Sec. 341.

Collateral References

Corporations \approx 93.
18 C.J.S. Corporations § 370.

Sale, or surrender of stock for sale, to pay assessment, as relieving stockholder from further liability. 66 ALR 436.

15-712. (5984) Highest bidder to be the purchaser. The person offering at such sale to pay the assessment and costs for the smallest number of shares or fraction of a share is the highest bidder, and the stock purchased must be transferred to him on the stock books of the corporation, on payment of the assessment and costs.

History: En. in substance as Sec. 12, p. 501, Civ. C. 1895; re-en. Sec. 3878, Rev. C. 86, L. 1883; re-en. Sec. 507, 5th Div. Comp. 1907; re-en. Sec. 5984, R. C. M. 1921. Cal. Stat. 1887; re-en. in present form as Sec. Civ. C. Sec. 342.

15-713. (5985) Corporation may purchase in default of bidder. If, at the sale of stock, no bidder offers the amount of the assessments and costs and charges due, the same may be bid in and purchased by the corporation through the president, secretary, or any director thereof, at the amount of the assessments, costs, and charges due; and the amount of the assessments, costs, and charges must be credited as paid in full on the books of the corporation, and entry of the transfer of the stock to the corporation

must be made on the books thereof. While the stock remains the property of the corporation it is not assessable, nor must any dividends be declared thereon; but all assessments and dividends must be apportioned upon the stock held by the stockholders of the corporation.

History: En. in substance as Sec. 13, p. 502, Civ. C. 1895; re-en. Sec. 3879, Rev. C. 87, L. 1883; re-en. Sec. 508, 5th Div. Comp. 1907; re-en. Sec. 5985, R. C. M. 1921. Cal. Stat. 1887; re-en. in present form as Sec. Civ. C. Sec. 343.

15-714. (5986) Disposition of stock purchased by corporation. All purchases of its own stock made by any corporation vest the legal title to the same in the corporation, and the stock so purchased is held subject to the control of the stockholders, who may make such disposition of the same as they deem fit, in accordance with the by-laws of the corporation or vote of a majority of all the remaining shares. Whenever any portion of the capital stock of a corporation is held by the corporation by purchase, a majority of the remaining shares is a majority of the stock for all purposes of election or voting on any question at a stockholders' meeting.

History: En. in substance as Sec. 14, p. 87, L. 1883; re-en. Sec. 509, 5th Div. Comp. Stat. 1887; re-en. in present form as Sec. 503, Civ. C. 1895; re-en. Sec. 3880, Rev. C. 1907; re-en. Sec. 5986, R. C. M. 1921. Cal. Civ. C. Sec. 344.

Collateral References
Corporations—376.
19 C.J.S. Corporations § 950.

15-715. (5987) Extension of time of delinquent sale. The dates fixed in any notice of assessment or notice of delinquent sale, published according to the provisions hereof, may be extended from time to time for not more than thirty days, by order of the directors entered on the records of the corporation; but no order extending the time for the performance of any act specified in any notice is effectual unless notice of such extension or postponement is appended to and published with the notice to which the order relates.

History: En. in substance as Sec. 15, p. 504, Civ. C. 1895; re-en. Sec. 3881, Rev. C. 88, L. 1883; re-en. Sec. 510, 5th Div. Comp. 1907; re-en. Sec. 5987, R. C. M. 1921. Cal. Stat. 1887; re-en. in present form as Sec. Civ. C. Sec. 345.

15-716. (5988) Assessment shall not be invalidated. No assessment is invalidated by a failure to make publication of the notices hereinbefore provided for, nor by the non-performance of any act required in order to enforce the payment of the same, but in case of any substantial error or omission in the course of proceedings for collection, all previous proceedings, except the levying of the assessment, are void, and publication must begin anew.

History: En. in substance as Sec. 16, p. 505, Civ. C. 1895; re-en. Sec. 3882, Rev. C. 88, L. 1883; re-en. Sec. 511, 5th Div. Comp. 1907; re-en. Sec. 5988, R. C. M. 1921. Cal. Stat. 1887; re-en. in present form as Sec. Civ. C. Sec. 346.

15-717. (5989) Action for recovery of stock—limitation thereon. No action must be sustained to recover stock sold for delinquent assessments, upon the ground of irregularity or defect of the notice of sale, or defect or irregularity in the sale, unless the party seeking to maintain such action first pays or tenders to the corporation, or the party holding the stock sold, the sum for which the same was sold, together with all subsequent assessments which may have been paid thereon and interest on such sums from

the time they were paid; and no such action must be sustained unless the same is commenced by the filing of a complaint and the issuing of a summons thereon within six months after such sale was made.

History: En. in substance as Sec. 17, p. 88, L. 1883; re-en. Sec. 512, 5th Div. Comp. Stat. 1888; re-en. in present form as Sec. 506, Civ. C. 1895; re-en. Sec. 3883, Rev. C. 1907; re-en. Sec. 5989, R. C. M. 1921. Cal. Civ. C. Sec. 347.

References

Cited or applied as section 3883, Revised Codes, in *Edwards v. Plains Light and Water Co.*, 49 M 535, 547, 143 P 962.

Cross-Reference

Limitation of actions, six months, sec. 93-2609.

15-718. (5990) Proofs of publication and sale. The publication of notice required by this chapter must be proved by the affidavit of the printer, foreman, or principal clerk of the newspaper in which the same was published; and the affidavit of the secretary or auctioneer is prima facie evidence of the facts therein stated. Certificates, signed by the secretary and under the seal of the corporation, are prima facie evidence of the contents thereof.

History: En. in substance as one of Secs. 1-17, pp. 84-88, L. 1883; re-en. as one of Secs. 496-512, 5th Div. Comp. Stat. 1887; re-en. in present form as Sec. 507, Civ. C. 1895; re-en. Sec. 3884, Rev. C. 1907; re-en. Sec. 5990, R. C. M. 1921. Cal. Civ. C. Sec. 348.

Collateral References

Corporations—89(2).
18 C.J.S. Corporations § 359.

15-719. (5991) Waiver of sale—action to recover assessment. On the day specified for declaring the stock delinquent, or at any time subsequent thereto and before the sale of the delinquent stock, the board of directors may elect to waive further proceedings under this chapter for the collection of delinquent assessments, or any part or portion thereof, and may elect to proceed by action to recover the amount of the assessment and the costs and expenses already incurred, or any part or portion thereof.

History: En. in substance as one of Secs. 1-17, pp. 84-88, L. 1883; re-en. as one of Secs. 496-512, 5th Div. Comp. Stat. 1887; re-en. in present form as Sec. 508, Civ. C.

1895; re-en. Sec. 3885, Rev. C. 1907; re-en. Sec. 5991, R. C. M. 1921. Cal. Civ. C. Sec. 349.

15-720. (5992) To what corporations applicable. The provisions of this chapter only apply to such corporations whose articles of incorporation set forth the fact that the stock of such corporation is assessable.

History: En. in substance as one of Secs. 1-17, pp. 84-88, L. 1883; re-en. as one of Secs. 496-512, 5th Div. Comp. Stat. 1887; re-en. in present form as Sec. 509, Civ. C. 1895; re-en. Sec. 3886, Rev. C. 1907; re-en. Sec. 5992, R. C. M. 1921.

Collateral References

Corporations—93, 175.
18 C.J.S. Corporations §§ 366, 486.

15-721. (5993) Other corporations may make stock assessable. Any corporation organized under the laws of the state of Montana whose stock is not assessable may, by and with the consent of stockholders in such corporation, holding three-fourths of the stock of such corporation, in writing, spread upon the records of such corporation, render its stock assessable, under the provisions of this chapter. The board of directors of any corpora-

tion formed under the laws of the state of Montana, where such corporation desires to avail itself of the provisions of this chapter, shall file and have recorded in the office of the secretary of state, and in the office of the county clerk and recorder where the original articles of incorporation were filed, a certificate, duly acknowledged as provided in cases of articles of incorporation, stating that the stock of such corporation has been rendered assessable by a compliance with the provisions of this section, and thereafter such corporation shall have the right to levy assessments upon its capital stock as provided in this chapter.

History: En. Sec. 18, p. 88, L. 1883; re-en. Sec. 513, 5th Div. Comp. Stat. 1887; amd. Sec. 1, p. 92, L. 1893; amd. Sec. 510, Civ. C. 1895; re-en. Sec. 3887, Rev. C. 1907; amd. Sec. 1, Ch. 2, L. 1919; re-en. Sec. 5993, R. C. M. 1921.

Operation and Effect

In enacting this section (before the amendment of 1919), the legislature intended to and did make the individual stockholder, and not the share of stock, the unit of voting power, and such a

change made with the consent of only ninety-six out of three hundred and one stockholders, though it was made by those owning more than three-fourths of the company's stock, was without effect, and an assessment levied in pursuance thereof was void. *Smith v. Iron Mountain Tunnel Co.*, 46 M 13, 18, 125 P 649.

Collateral References

Corporations—175.
18 C.J.S. Corporations § 486.

CHAPTER 8

POWERS AND DUTIES OF CORPORATIONS

- Section 15-801. Powers of corporations.
15-802. Corporations may issue bonds convertible into stock—procedure.
15-803. Limitation of powers.
15-804. Issuing bills prohibited.
15-805. Reservation of power to repeal.
15-806. Corporate existence cannot be questioned.
15-807. Name.
15-808. Corporations to organize within one year—inquiry into corporate business or incorporation.
15-809. Consolidation not to make foreign corporations.
15-810. Real property—how much may be acquired by corporations.
15-811. Annual statement of corporations.

15-801. (5994) Powers of corporations. Any corporation hereafter organized or now existing under any of the laws of the state of Montana, whether formed and existing before or after the taking effect of the codes on July 1, 1895, as such, has power:

1. Of succession, by its corporate name, for the period limited in its articles of incorporation;
2. To sue and be sued, in any court;
3. To make and use a common seal, and alter same at pleasure;
4. To purchase, hold and convey such real and personal estate as the purposes of the corporation may require;
5. To appoint such subordinate officers or agents as the business of the corporation may require, and to allow them suitable compensation;
6. To make by-laws, not inconsistent with any existing law, for the management of its property, the regulation of its affairs, and for the transfer of its stock;

7. To enter into any obligations or contracts essential to the transaction of its ordinary affairs, or for the purposes of the corporation;

8. To create two (2) or more kinds of stock of such classes, with such designation, and with such voting powers, if any, with any desired limitations and restrictions thereof, as shall be stated in the original or amended articles of incorporation, and, if desired, in one or more series as to any class, and with such designation and description of the manner of issuing, preferences, limitations, restrictions, and other terms and conditions of or on which each class of stock, or series thereof, shall be issued, as shall be described and set forth in the original or amended articles of incorporation, or by resolution of the board of directors of the corporation if delegation of power so to do is set forth in the original or amended articles of incorporation.

Any such corporation may also, by provision in its original or amended articles of incorporation, deny or limit to the present or future stockholders of any or all classes of stock any pre-emptive or preferential right to subscribe to any or all additional issues of stock of any or all classes, or bonds, debentures or other obligations convertible into stock. Subject to the provisions of the constitution and laws of Montana fixing the required representation and proportion of outstanding capital stock required to be represented and voted, for specified action, at any and all corporate meetings, elections, votes, or consent proceedings, such corporation may, by provision in its original or amended articles of incorporation, fix the proportion of each or any class of stock which shall be required to be represented or voted, for specified action, at any such meeting, election, vote or consent proceeding.

Any such corporation shall also have power, by provision in its original or amended articles of incorporation, to issue bonds, debentures or other obligations, convertible into stock of any class, in amounts, upon the terms, in the manner and under the conditions provided by resolution of the board of directors. Any such corporation shall also have power, by provision in the original or amended articles of incorporation, or by resolution of the board of directors of the corporation, if delegation of power so to do is set forth in the original or amended articles of incorporation, to make the stock of any class, or series thereof, convertible into stock of any other class or classes, or of any other series of the same or any other class or classes, upon such terms and conditions as shall be expressed in the original or amended articles of incorporation, or in a resolution of the board of directors of the corporation if delegation of power so to do is set forth in the original or amended articles of incorporation.

The power to increase or decrease the stock, as in this code elsewhere provided, shall apply to any and all classes of stock; but at no time shall the total amount of the preferred stock exceed two-thirds ($\frac{2}{3}$) of the actual capital paid in cash or property; and such preferred stock, or any series thereof, may, if desired, be made subject to redemption at not less than par, at a price, to be expressed in the stock certificate thereof; and the holders thereof shall be entitled to receive, and the corporation shall be bound to pay thereon, a fixed yearly dividend, if actually earned, to be expressed in the certificate, not exceeding eight per centum (8%) payable

quarterly, semi-annually, or annually, before any dividend shall be set apart or paid on the common stock, and such dividend may be made cumulative. Unless its original or amended articles of incorporation shall so provide, no corporation shall create preferred stock.

Before any corporation shall issue any shares of stock of any class, or series thereof, of which the designations, manner of issuing, preferences, limitations, restrictions and other terms and conditions, shall not have been set forth in the articles of incorporation, or in any amendment thereto, but shall be provided for in a resolution or resolutions adopted by the board of directors, pursuant to authority expressly vested in it by the provisions of the articles of incorporation or an amendment thereto, a certificate, setting forth a copy of such resolution or resolutions, shall be made under the seal of the corporation, and signed by the president or vice-president, and by the secretary or an assistant secretary of the corporation, and acknowledged by such president or vice-president before an officer authorized by the laws of Montana to take acknowledgments of deeds, and shall be filed in the office of the county clerk of the county where the original articles of incorporation of such corporation were filed, and a copy thereof, certified by such county clerk, shall be filed in the office of the secretary of state.

9. To purchase or otherwise acquire, directly or indirectly, any shares of stock issued by it in any and all cases where such corporation may under existing law have the power to make the purchase or acquisition, including, but without limitation, the following cases:

(A) For the purpose of collecting or compromising in good faith a debt, claim or controversy with any shareholder;

(B) From shareholders who by reason of dissent from any proposed corporate action are entitled under sections 15-912 and 15-913 to be paid the value of their shares;

(C) From one who as an employee, other than as an officer or director, has purchased such shares from the corporation under an agreement reserving to the corporation the option to repurchase or obligating it to repurchase such shares;

(D) To eliminate fractional shares;

(E) To redeem or purchase shares subject to redemption at prices not exceeding the redemption price thereof;

(F) To carry out the provisions of its articles of incorporation authorizing the conversion of its shares; and

(G) Subject to any limitations contained in its articles of incorporation, out of earned surplus.

Shares may be acquired either out of stated capital or from any surplus under the above subdivisions (A) to (E), inclusive. Purchases from earned surplus under the above subdivision (G) are not limited to cases authorized under other subdivisions of this section.

Nothing herein shall in any way limit the powers now existing of a corporation with respect to the purchase or acquisition of its shares of stock, and this act shall be considered as a restatement and reaffirmation of corporate powers heretofore existing in that regard.

10. (A) To provide by action of its board of directors for the furnishing or granting to any employee or employees, at the expense of the corporation, insurance against accident, sickness, disability or death, and for the payment of medical expenses and pensions, retirement allowances or gratuities to any employees based on services rendered before, after, or before and after, such plan is adopted, and to their wives or dependents, such pension, allowance or gratuity to be payable in such amounts, at such times and upon such conditions, for life or for such shorter period, and to be revocable or irrevocable, as the board of directors of the corporation in its discretion shall determine; and to provide for any such pensions or allowances or insurance the board of directors may establish one or more trust funds. All pension allowances or gratuities heretofore granted or paid by any such corporation shall be as valid as if granted, allowed or paid pursuant to the authority of this act. The term "employees" as used in this act shall be deemed to include officers. Nothing herein contained shall be construed as limiting, modifying or impairing any right, power or authority of a corporation to grant or pay such pensions, allowances or gratuities heretofore possessed by it or now possessed by it under existing law, the intention of this act being cumulative and not restrictive.

(B) To issue or purchase and sell shares of its capital stock or other securities to any or all of its employees, and to grant rights or options to such employees entitling the holders thereof to purchase from the corporation any shares of its capital stock of any class or classes, or other securities, such rights or options to be evidenced by such instruments as shall be approved by the board of directors of the corporation, all upon such terms and for such time or times, which may be limited or unlimited in duration, at or within which, and the price or prices at which, any such shares may be purchased upon the exercise of any such right or option, as may be fixed in a resolution or resolutions adopted by the board of directors providing for the creation and issue of such rights or options; provided, however, that in case the shares of stock of the corporation to be issued upon the exercise of such rights or options shall be unissued shares having a par value, the price or prices so to be received therefor shall not be less than the par value thereof, and provided further, that in case the shares of stock so to be issued shall be unissued shares of stock without par value, the consideration therefor shall be determined by the board of directors of the corporation, and in the absence of actual fraud in the transaction the judgment of the directors as to the adequacy of the consideration to the corporation for the issuance of any shares of stock or any such rights or options shall be conclusive.

(C) To afford or grant to any employee or employees of the corporation participations in the profits of the corporation or of any branch or division thereof, and to enter into contracts or agreements with employees with respect thereto, and may in connection therewith adopt, amend or repeal from time to time plans therefor, all on such terms and conditions as the board of directors may from time to time determine. Any such participations may be based upon length of service, nature of service, amount of compensation paid or rate of compensation of such employees, or upon such other bases as may be determined by the board of directors, and

any such participation may be afforded or granted by the corporation in cash or by the delivery of shares of its capital stock issued by it or purchased or held by it for such purpose; all as may be determined from time to time by the board of directors.

History: En. Sec. 44, p. 35, L. 1867; re-en. Sec. 37, p. 415, Cod. Stat. 1871; re-en. Sec. 280, 5th Div. Rev. Stat. 1879; re-en. Sec. 482, 5th Div. Comp. Stat. 1887; amd. Sec. 520, Civ. C. 1895; amd. Sec. 3, Ch. 102, L. 1905; re-en. Sec. 3889, Rev. C. 1907; amd. Sec. 2, Ch. 88, L. 1915; re-en. Sec. 5994, R. C. M. 1921; amd. Sec. 1, Ch. 33, L. 1931; amd. Sec. 1, Ch. 39, L. 1947; amd. Sec. 1, Ch. 46, L. 1953. Cal. Civ. C. Sec. 354.

Cross-References

Acknowledgments by, sec. 39-112.

Contributions for political purposes forbidden, sec. 94-1444.

Amount of Capital Stock

There being no statutory provision as to the amount of capital stock of a corporation that must be subscribed before the corporation can do business, the general rule applies that all of such stock must be subscribed before the corporation can recover on a stock subscription. *Enterprise Sheet Metal Works v. Schendel*, 55 M 42, 52, 173 P 1059.

No Power to Enter Into Contracts of Guaranty

Under this section and the next succeeding section, a mercantile corporation has no power to enter into contracts or obligations of guaranty. *Kellogg-Mackay Co. v. Havre Hotel Co.*, 199 Fed 727, 733.

Power to Issue Notes

Held, that in the absence of a state statute prohibiting ordinary industrial corporations from borrowing money on promissory notes or a showing that a particular corporation by its articles of incorporation or its by-laws is prohibited from so doing, a mining corporation, under this section, impliedly granting such power when necessary to be exercised in the transaction of its ordinary affairs or for corporate purposes, may do so. *Alley v. Butte & Western Min. Co.*, 77 M 477, 491, 251 P 517.

Power to Sell Assets

Under the common-law powers reserved to corporations by the proviso in section 15-901 et seq., and enumerated in a general way in section 15-401 and this section, the board of directors of a going corporation could, in the proper pursuit of its business and within the purposes of its creation, against the dissent of a minority of its stockholders, sell a leasehold interest in realty with improvements thereon,

and where such sale was made before plaintiffs had judgment against the selling corporation, they acquired no title under execution sale, and nonsuit was properly granted in their action in ejectment against the purchaser. *Wortman v. Luna Park Amusement Co.*, 61 M 89, 97, 98, 201 P 570.

References

Aetna C. & S. Co. v. American B. Co., 63 M 474, 479, 208 P 921; *Barnett Iron Works, Inc. v. Harmon*, 87 M 38, 42, 285 P 191.

Collateral References

Corporations—1.

19 C.J.S. Corporations § 933.

13 Am. Jur., Corporations, p. 226, §§ 83 et seq.; p. 770, §§ 739 et seq.

Using funds or property for humanitarian purposes. 3 ALR 443.

Guaranteeing for accommodation the contracts of corporation's customers or vendors with third persons. 11 ALR 554.

Conclusiveness of decision of corporate officers or directors that property is of sufficient value to warrant a loan under the powers of the corporation. 18 ALR 645.

Passing title to real property which corporation holds in excess of its powers. 37 ALR 204.

Right of heirs or next of kin to attack devise to corporation on ground of its incapacity to take. 69 ALR 1359.

Performing or holding itself out as ready to perform functions in the nature of legal services. 73 ALR 1327.

Corporation's payment of bonus to officers or employees. 88 ALR 751.

Power of corporation to change obligations to stockholders. 105 ALR 1452.

Extension or renewal of period of corporate existence. 108 ALR 59.

Validity of cancellation of accrued dividends on preferred corporate stock. 8 ALR 2d 893.

Estoppel of stockholder to recover back or to secure restoration of compensation of corporate officers claimed to be exorbitant or unauthorized. 16 ALR 2d 467.

Preferred stockholders' rights, upon liquidation or dissolution, to dividends. 25 ALR 2d 788.

Power of corporation to ratify act of corporate officer or agent in hiring employee for life. 28 ALR 2d 938.

Power of corporation with respect to payment of remuneration, bonus, and the

like, to widow or family of deceased officer. 29 ALR 2d 1262.

Power to ratify stock option plan under which selected personnel of corporation may acquire stock interest therein. 34 ALR 2d 855.

Corporation's power to contract for in-

demnification of attorneys' fees and other expenses incident to controversy respecting internal affairs of corporation. 39 ALR 2d 594.

Power of a business corporation to donate to a charitable or similar institution. 39 ALR 2d 1192.

15-802. Corporations may issue bonds convertible into stock—procedure.

The board of directors of any corporation hereafter organized or now existing under any of the laws of the state of Montana, whether formed and existing before or after the taking effect of the codes on July 1, 1895, as such, has power to issue bonds, debentures or other obligations convertible into stock of any class, in amounts, upon the terms, in the manner and under the conditions provided by resolution of the board of directors of such corporation; provided that the authorized stock of such corporation shall not be increased without the consent of the persons holding a majority of the stock first obtained at a meeting held after at least thirty (30) days notice given in pursuance of law. Such resolution, except when the original or amended articles of incorporation provide otherwise, shall preserve to the stockholders pre-emptive or preferential rights to subscribe to such issue as provided by law.

History: En. Sec. 1, Ch. 60, L. 1939.

Cross-Reference

Unauthorized issuance of bonds, sec. 94-2303.

Collateral References

Corporations⌚469.
19 C.J.S. Corporations § 1147.

15-803. (5995) Limitation of powers. In addition to the powers enumerated in the preceding section, and to those elsewhere expressly given, no corporation shall possess or exercise any corporate powers, except such as are necessary to the exercise of the powers so enumerated and given.

History: Ap. p. Sec. 45, p. 35, L. 1867; re-en. Sec. 38, p. 415, Cod. Stat. 1871; re-en. Sec. 281, 5th Div. Rev. Stat. 1879; re-en. Sec. 483, 5th Div. Comp. Stat. 1887; amd. Sec. 521, Civ. C. 1895; re-en. Sec. 3890, Rev. C. 1907; re-en. Sec. 5995, R. C. M. 1921. Cal. Civ. C. Sec. 355.

Compiler's Note

The reference in this section by the words "in the preceding section" refers to section 15-801.

Collateral References

Corporations⌚370.
19 C.J.S. Corporations § 941.

15-804. (5996) Issuing bills prohibited. No corporations shall create or issue bills, notes, or other evidence of debt, upon loans or otherwise, for circulation as money.

History: En. Sec. 47, p. 36, L. 1867; re-en. Sec. 40, p. 415, Cod. Stat. 1871; re-en. Sec. 283, 5th Div. Rev. Stat. 1879; re-en. Sec. 485, 5th Div. Comp. Stat. 1887; amd. Sec. 522, Civ. C. 1895; re-en. Sec. 3891, Rev. C. 1907; re-en. Sec. 5996, R. C. M. 1921. Cal. Civ. C. Sec. 356.

References

Alley v. Butte & Western Min. Co., 77 M 477, 491, 251 P 517.

Collateral References

Corporations⌚464, 469.
19 C.J.S. Corporations §§ 1147, 1225.

15-805. (5997) Reservation of power to repeal. Every grant of corporate power is subject to alteration, suspension, or repeal, in the discretion of the legislative assembly.

History: En. Sec. 394, Civ. C. 1895; re-en. Sec. 3809, Rev. C. 1907; re-en. Sec. 5997, R. C. M. 1921. Field Civ. C. Sec. 381.

Operation and Effect

When a mining company was organized between 1889 and 1898, the statute was

made a part of its charter, giving notice to all concerned that the legislature of the state might at any time alter, amend, or repeal the law under which it existed. *Allen v. Ajax Mining Co.*, 30 M 490, 504, 77 P 47. See *Somerville v. St. Louis M. & M. Co.*, 46 M 268, 275, 127 P 464.

15-806. (5998) Corporate existence cannot be questioned. One who assumes an obligation to an ostensible corporation, as such, cannot resist the obligation on the ground that there was in fact no such corporation until that fact has been adjudged in a direct proceeding for the purpose.

History: En. Sec. 395, Civ. C. 1895; re-en. Sec. 3810, Rev. C. 1907; re-en. Sec. 5998, R. C. M. 1921. Field Civ. C. Sec. 382.

Operation and Effect

A corporation that has been engaged in business, apparently in good faith, cannot avoid liability on the ground that its directors, in the conduct of its private affairs, never observed the forms of law in perfecting the organization, and, therefore, that it had ceased to exist as a corporation. *Daily v. Marshall*, 47 M 377, 396, 133 P 681.

One who enters into a written contract with a corporation, designated as such therein, and thereunder incurs a financial obligation, is estopped, under this section from denying the corporate capacity of plaintiff in an action to recover thereon. *W. T. Rawleigh Company v. Miller*, 105 M 456, 461, 73 P 2d 552.

15-807. (5999) Name. Every corporation must have a corporate name, which it has no power to change unless expressly authorized by law, but the name is to be deemed so far matter of description that a mistake in the name in any instrument may be disregarded, if a sufficient description remains by which to ascertain the corporation intended.

History: En. Sec. 396, Civ. C. 1895; re-en. Sec. 3811, Rev. C. 1907; re-en. Sec. 5999, R. C. M. 1921. Field Civ. C. Sec. 383.

15-808. (6000) Corporations to organize within one year—inquiry into corporate business or incorporation. If a corporation does not organize and commence the transaction of its business or the construction of its works within one year from the date of its incorporation, its corporate powers cease. The due incorporation of any company, claiming in good faith to be a corporation under this code, and doing business as such, or its right to exercise corporate powers, shall not be inquired into collaterally in any private suit to which such de facto corporation may be a party; but such inquiry may be had at the suit of the state on information of the attorney-general.

History: En. Sec. 523, Civ. C. 1895; re-en. Sec. 3892, Rev. C. 1907; re-en. Sec. 6000, R. C. M. 1921. Cal. Civ. C. Sec. 358.

Collateral References

Corporations ⇨ 38-41.
18 C.J.S. Corporations §§ 61, 80; 19 C.J.S. Corporations § 1654.

Party Contracting With Ostensible Corporation May Not Deny Its Corporate Identity

One who has contracted with an ostensible corporation (in the instant case for the purchase of real property) may not deny its corporate identity when it is attempting by an action in ejectment to oust him after his defaults in making payment. An instrument designating a party as a corporation is prima facie evidence of corporate existence, sufficient under this section. *Norwegian Lutheran Church of America v. Armstrong*, 112 M 528, 532, 118 P 2d 380.

References

Golden Rod Mining Co. v. Bukvich, 108 M 569, 579, 92 P 2d 316.

Collateral References

Corporations ⇨ 29, 34.
18 C.J.S. Corporations § 108.

Collateral References

Corporations ⇨ 43, 47, 48.
18 C.J.S. Corporations §§ 168, 171, 172.

Defenses Held Collateral Attack

The defense of a corporation and one of its stockholders in an action by another

stockholder to recover on a corporate note, that the note was void because the corporate powers of the company had lapsed upon the retirement of one of the directors who had sold his stock to the other two, held to constitute a collateral attack on the corporation; held, further, that the defendant corporate stockholder was not in a position to assert that under the facts the activities of the corporation constituted a partnership between himself and plaintiff, the only other stockholder, so as to entitle him to halt the foreclosure of the mortgages and obtain an accounting. *Dunham v. Natural Bridge Ranch Co.*, 115 M 579, 583, 587, 147 P 2d 902.

Effect of Corporate Abeyance on Liability

When the entity of a corporation has fallen into a condition of abeyance, the public is not supposed to know of the fact; hence, where strangers have dealt with the corporation, it can be held for all obligations assumed by its officers in its name. *Hanson Sheep Co. v. Farmers' & Traders' State Bank*, 53 M 324, 336, 163 P 1151.

When and By Whom May a Corporation Be Attacked

Failure to comply with statutory provisions relative to the formation of corporations, does not ipso facto work a dissolution nor permit the question of the corporate capacity to be raised collaterally by a private citizen in a controversy between him and the corporation. *Daily v. Marshall*, 47 M 377, 392, 133 P 681.

Id. It was the purpose of the legislature to prohibit inquiry in any private civil action into the question whether the ostensible corporation has a legal existence, further than to ascertain whether the requirements prescribed by the section of

the code relative to the formation of corporations have been observed.

After a corporation has been lawfully organized, its character, as such, cannot be inquired into collaterally at the instance of a private citizen in a controversy between him and it, and its legal capacity can be brought in question by the state only through its proper officer, as prescribed in this section, and for one of the causes enumerated in section 93-6402. *Barnes v. Smith*, 48 M 309, 316, 137 P 541.

Where there is no board of directors or secretary of a corporation, the entire capital stock of which is owned by a man and his wife, and where the man is president and has used the corporation to further his own personal ends, he is estopped to claim that he and the corporation are distinct entities, that he bears a fiduciary relation toward it, and that he had no authority to authorize a bank, with which he had deposited money for the corporation, to apply the deposit in discharge of his personal obligation. *Hanson Sheep Co. v. Farmers' & Traders' State Bank*, 53 M 324, 335, 163 P 1151.

Id. The rule that the legal capacity of a corporation cannot be inquired into collaterally by a private person in a controversy between it and him does not preclude courts to examine into the facts of a particular case to determine the identity of a person who uses the name of a corporation for his own purposes, and to fix liability upon him for the ostensible corporate acts.

Collateral References

Corporations—24, 29; Quo Warranto—16.

18 C.J.S. Corporations §§ 63, 108 et seq.; 74 C.J.S. Quo Warranto § 14.

15-809. (6001) Consolidation not to make foreign corporations. If any railroad, telegraph, telephone, express, or other corporation or company organized under any of the laws of this state, shall consolidate by sale or otherwise with any railroad, telegraph, telephone, express, or other corporation organized under any of the laws of any other state or territory, or of the United States, the same shall not thereby become a foreign corporation, but the courts of this state shall retain jurisdiction over that part of the corporate property within the limits of the state in all matters that may arise as if said consolidation had not taken place.

History: En. Sec. 524, Civ. C. 1895; re-en. Sec. 3893, Rev. C. 1907; re-en. Sec. 6001, R. C. M. 1921.

Collateral References

Corporations—632.

20 C.J.S. Corporations § 1783.

15-810. (6002) Real property—how much may be acquired by corporations. No corporation shall acquire or hold any more real property than may be reasonably necessary for the transaction of its business, or the

construction of its works, except as otherwise specially provided. A corporation may acquire real property as provided in sections 93-9901 to 93-9926.

History: En. Sec. 526, Civ. C. 1895; re-en. Sec. 3895, Rev. C. 1907; re-en. Sec. 6002, R. C. M. 1921. Cal. Civ. C. Sec. 360.

Power to Condemn Generally

The changing of the channel of a stream, which would otherwise have to be crossed by a railway to conform to the route selected by it, when necessary to make the road secure for life and property, is a part of the construction of the road, and authority is granted to secure the necessary amount of land to make such change by means of condemnation proceedings. *State ex rel. Bloomington v. District Court*, 34 M 535, 543, 88 P 44. See *Archer v. Chicago, Milwaukee & St. Paul Ry. Co.*, 41 M 56, 70, 108 P 571; *Northern Pacific Ry. Co. v. McAdow*, 44 M 547, 554, 121 P 473; *Postal Tel. Cable Co. of America v. Nolan*, 53 M 129, 137, 162 P 169.

The provisions of this section and sections 72-201 and 72-205 are exceedingly liberal, but they must be interpreted in the light of section 93-9905, and the rule of necessity must be determinative of the right to take in each instance. *Northern Pacific Ry. Co. v. McAdow*, 44 M 547, 555, 121 P 473.

Right of Eminent Domain by a Foreign Corporation

This section furnishes no authority for the exercise of the right of eminent domain by a foreign corporation. *Helena Power Transmission Co. v. Spratt*, 35 M 108, 130, 88 P 773; *Spratt v. Helena Power Transmission Co.*, 37 M 60, 79, 94 P 631.

By this section the legislature intended to give foreign corporations the same power in this respect as domestic corporations enjoy. *Spratt v. Helena Power Transmission Co.*, 37 M 60, 79, 94 P 631.

References

Cited or applied as section 3895, Revised Codes, in *Uihlein v. Caplice Commercial Co.*, 39 M 327, 336, 102 P 564.

Collateral References

Corporations \Rightarrow 435.

19 C.J.S. Corporations §§ 1089, 1115.

Passing title to real property which corporation holds in excess of its powers. 37 ALR 204.

15-811. (6003) Annual statement of corporations. (1) Every corporation, having a capital stock, except banks, trust companies, and building and loan associations, shall by March 1st of each year hereafter, file in the office of the county clerk and recorder of the county in which the principal place of business of such corporation is situated, (and a certified copy thereof in the office of the secretary of state,) a report of the condition of said corporation on December 31st preceding, which shall state the amount of the authorized capital stock, the proportion thereof actually paid in, and the amount thereof actually paid in in cash, and the amount issued, if any in payment of property purchased, services rendered, or labor performed, and the amount of existing debts, and also the names and addresses of the directors or trustees, and of the president, vice-president, general manager (if any) and secretary and treasurer of the corporation. Such report shall be signed by the president or vice-president, and a majority of the directors, inclusive of the president or vice-president. The report shall be verified by the oath of the president, vice-president, secretary, or treasurer of such corporation. If the directors or trustees of any corporation shall fail to file such report, the directors of the corporation shall jointly and severally be liable for all debts or judgments of the corporation which may thereafter be in anywise incurred until such report shall be made and filed; provided, however, that if within twenty days of such failure a director or directors shall make and file, as aforesaid, an affidavit or affidavits stating that the failure was due to no fault or neglect of his or theirs, and stating also that, after the thirty-first day of December of the preceding year and before

said March 1st he or they requested the president or a sufficient number of the other directors, whose residence was known to the affiants, to join them in making report, such director or directors shall not be liable under this section.

(2) If the required report be made and filed after the time herein specified, the directors shall not, on account of the prior failure to make report, be liable for the debts thereafter contracted. Where such corporation, on account of insolvency or for any other reason, has ceased to be a going concern, and has ceased voluntarily to incur financial obligations, the directors may include a statement to that effect in their report, giving the reasons for cessation of the corporate activities of such corporation, and after two annual reports containing such statement have been filed, the directors shall not be liable for a failure to file annual reports during the time of such cessation of corporation activities.

History: En. Sec. 451, Civ. C. 1895; amd. Sec. 1, Ch. 32, L. 1903; amd. Sec. 1, Ch. 63, L. 1907; re-en. Sec. 3850, Rev. C. 1907; amd. Sec. 1, Ch. 140, L. 1909; amd. Sec. 1, Ch. 189, L. 1919; re-en. Sec. 6003, R. C. M. 1921; amd. Sec. 1, Ch. 5, L. 1927.

Cross-Reference

False financial statements, sec. 94-1803.

Attachment Improper to Recover Under This Statutory Liability

Held, that the liability of a director for the debts of his corporation imposed by this section, for failure of the corporation to file its annual report exhibiting its financial condition, etc., does not arise out of a contract, express or implied, for the direct payment of money, and that therefore a writ of attachment was improperly issued in an action by a creditor of a corporation against one of its directors to recover a debt owing to plaintiff by the corporation. *Butler v. Peters*, 62 M 381, 384, 205 P 247.

Constitutionality

This section, before its amendment, was held not unconstitutional as casting "liabilities and burdens upon domestic corporations from which foreign corporations are exempt," the penalty for failure to file the annual report being placed upon the officers and directors, and not upon the corporation. *Daily v. Marshall*, 47 M 377, 398, 133 P 681. See *First Nat. Bk. v. Cottonwood Land Co.*, 51 M 544, 549, 154 P 582.

Co-Operative Associations Liable Under This Section

The provisions of this section, declaring that the directors and trustees of a corporation who fail to file with the county clerk and recorder of the county of its principal place of business an annual report of its condition shall jointly and severally be liable for all corporate

debts or judgments then existing, or which may thereafter be incurred, until such report is made and filed, are applicable to co-operative associations organized for profit. *Anderson v. Equity Co-operative Assn.*, 67 M 291, 292, 293, 215 P 802.

Denial of Proper Corporate Formation as a Defense

If an active director of a corporation, that has been engaged in business, apparently in good faith, is sued and sought to be held for his failure, as president and director of the corporation, to file or have filed the annual report of the corporation, he cannot escape personal liability by denying the existence of the corporation, on the ground that the forms of law had never been observed in perfecting its organization, whether he was properly chosen as director or not. *Daily v. Marshall*, 47 M 377, 396, 133 P 681. See *Northern Pac. Ry. Co. v. Crowell*, 245 Fed 668, 671.

Effect of Amendment and Repeal of Statute Declaring Liability of Directors for Default in Making Annual Report, Without Saving Clause

Held, that in view of section 43-510, relating to effect of amendment of statutes, and section 15-1202, providing that amendment or repeal of a Code section relating to corporations shall not impair or take away a remedy given against a corporation or its officers for a liability previously incurred, prior decisions holding that amendment of this section "to read as follows" and repealing "all Acts and parts of Acts in conflict herewith" worked the extinction of the amended section "as though it had never existed" in the absence of a saving clause, were erroneous and are overruled. *Continental Supply Co. v. Abell et al.*, 95 M 148, 156 et seq., 24 P 2d 133. For decision overruled, see *Continental Oil Co. v. Montana C. Co.*, 63 M 223, 229, 207 P 116; *First*

Nat. Bank v. Cosier et al., 66 M 352, 354, 213 P 442; First Nat. Bank v. Barto et al., 72 M 437 et seq., 233 P 963.

Effect of Insolvency and Corporate Abeyance as a Defense

Where, in an action against the trustees of a corporation to charge them with individual liability for failure to file an annual report, it was alleged in defense that before the time for filing such report the corporation was insolvent and had entirely abandoned its business, that all its property belonged to one of its trustees, having been delivered to him in satisfaction of an indebtedness, and that for a period of two months no officer or trustee had exercised any corporate act or function, and that there was no intention to resume the business of said corporation, the acts set forth did not dissolve the corporation, and constituted no defense to the action. *Gans v. Switzer*, 9 M 408, 415, 24 P 18. See *Ames & Frost v. Heslet*, 19 M 188, 190, 47 P 805; *Northern Pac. Ry. Co. v. Crowell*, 245 Fed 667, 671.

Limitation of Action

The receiver of an insolvent bank who seeks to recover on the statutory liability of a director of a corporation indebted to the bank occupies the same position the bank would have occupied had it not become insolvent and sought to enforce the same liability; hence the fact that he did not become aware of the facts upon which he relied until he assumed charge of the bank was immaterial, so far as his right to maintain the action, which was then barred, is concerned. *Williams v. Hilger et al.*, 77 M 399, 402, 251 P 524.

Nature of Liability

The liability fixed by the statute requiring corporations to file an annual report is penal in its nature. *Gans v. Switzer*, 9 M 408, 413, 24 P 18; *Elkhorn Trading Co. v. Tacoma Min. Co.*, 16 M 322, 330, 40 P 606; *Wethey v. Kemper*, 17 M 491, 492, 43 P 716; *State Savings Bank v. Johnson*, 18 M 440, 442, 45 P 662; *Giddings v. Holter*, 19 M 263, 269, 48 P 8; *Manhattan Trust Co. v. Davis*, 23 M 273, 280, 58 P 718; *Daily v. Marshall*, 47 M 377, 398, 133 P 681.

The trustees of a corporation who filed a report, wherein they failed to specify as a debt of the company its liability on a covenant of title, were not liable for a false report, if, at the time the report was filed, the breach of the covenant was not known to them. *Giddings v. Holter*, 19 M 263, 267, 48 P 8.

While the liability imposed by a statute requiring corporations to file an an-

nual statement is often called penal, it is not so in the sense in which that term is commonly used. It is so only in the sense that it creates a liability which was not known at the common law, and therefore must be construed strictly. *Daily v. Marshall*, 47 M 377, 390, 398, 133 P 681. See *Northern Pac. Ry. Co. v. Crowell*, 245 Fed 668, 674.

A fine, in the sense in which the term is used in the constitution prohibiting excessive fines, is a penalty exacted by the state for some criminal offense, and has no application to the penalty imposed upon the directors of a corporation for neglect to file the annual statement required by statute. *Daily v. Marshall*, 47 M 377, 399, 133 P 681.

The right of action created in favor of a corporation's creditors to enforce the liability of a director, imposed upon him by reason of the failure of the company to file the annual report required by statute, survives his death, and may be prosecuted against his estate. *First Nat. Bk. v. Cottonwood Land Co.*, 51 M 544, 548, 154 P 582. See *Northern Pac. Ry. Co. v. Crowell*, 245 Fed 668, 671.

The liability of directors of a corporation for failure to file the annual report is joint and several, direct and primary, and not that of sureties and guarantors of its debts. *First Nat. Bk. v. Cottonwood Land Co.*, 51 M 544, 550, 154 P 582.

The statutory liability of a director of a corporation for all its debts or judgments for failure to file its annual financial report is in the nature of a penalty imposed for omission to obey the mandate of the law and is not contractual in character. *Butler v. Peters*, 62 M 381, 384, 205 P 247.

Where the primary purpose of an action against a corporation was to recover on promissory notes aggregating the sum of \$27,000, and to enforce liability of its directors as co-makers and guarantors and for failure to file the annual statements required by statute, and the only equitable relief prayed for was the foreclosure of a mortgage given by one of the directors on two town lots as security for the notes, the answers of defendants consisting inter alia of denials and counterclaims which were put in issue by reply, the defendants were entitled to a trial by jury of the strictly legal issues presented by the pleadings, and denial of such jury trial was error. *Benson-Stabeek Co. v. Farmers' E. Co. et al.*, 66 M 395, 404, 214 P 600.

The basis of an action to recover on the statutory liability of a director of a corporation for failure of the corporation to file the annual report of its financial condition required by this section is an antecedent debt due to plaintiff; the lia-

bility commences with and is dependent upon such debt at the time of the first default, is direct and primary and, having once attached, is not affected by the renewal of a note evidencing the debt, and is not renewed by subsequent defaults. *Williams v. Hilger et al.*, 77 M 399, 402, 251 P 524.

Judgments are debts; hence in providing in this section that corporate directors failing to make timely report of their corporation's financial condition shall be liable for the debts of and judgments against the corporation which may thereafter be incurred, the legislature must, by the use of the term "judgments," have intended judgments other than for debt, the latter being impliedly included in the word "debts." *Continental Supply Co. v. Abell et al.*, 95 M 148, 168, 24 P 2d 133.

Operation in General

If a corporation fails to file its annual report, as required by statute, all the trustees of the company become jointly and severally liable for all its indebtedness existing at the time such report should have been filed. *Gans v. Switzer*, 9 M 408, 413, 24 P 18; *Elkhorn Trading Co. v. Tacoma Min. Co.*, 16 M 322, 329, 40 P 606.

Short Existence of Corporation Not Excuse for Not Filing

The fact that a corporation was in existence but a few months prior to the expiration of the year covering which it is required by this section to make a report on or before March 1 succeeding of its financial condition, does not excuse it from making it. *Continental Supply Co. v. Abell et al.*, 95 M 148, 156 et seq., 24 P 2d 133.

Sufficiency of Complaint

As statutes making the trustees of a corporation personally liable for company debts upon failure to file an annual report are penal in their nature and must be strictly construed, a complaint seeking to enforce such liability is insufficient where it fails to state the county in which the business of the company is conducted, or that it was engaged in any business in any county. *Wethey v. Kemper*, 17 M 491, 492, 43 P 716. See *Whitefoot v. Loan Association*, 18 M 164, 166, 44 P 514; *Daily v. Marshall*, 47 M 377, 390, 133 P 681.

One who seeks to hold directors of a corporation liable for failure to comply with the provisions of a statute, relative to filing the annual report of a corporation, must allege facts and circumstances clearly showing that the liability has attached, nothing being presumed in favor

of the pleader. *Daily v. Marshall*, 47 M 377, 390, 133 P 681.

Where a creditor of a corporation seeks to recover a debt reduced to judgment from its directors for failure to file the annual report mentioned above, a suit on the judgment is not required; in such a case the complaint must show liability on the defendants' part, not at the time the judgment was secured but at the time the debt was incurred, and that it was incurred during the period of their default. *Continental Supply Co. v. Abell et al.*, 95 M 148, 168, 24 P 2d 133.

Time for Filing

Where a corporation mailed its annual report to the county clerk on January 16th, but failed to inclose the filing fee of one dollar, and the clerk received the report on the 17th or 19th, retained it in his office, and mailed the sender a bill for the fee, and on January 23rd the fee was received, and the clerk thereupon indorsed the report as filed on the latter date, it was held, in an action commenced to enforce the directors' individual liability, that the evidence was insufficient to show that the report was not filed in time. *Minneapolis Steel & Machinery Co. v. Thomas*, 54 M 132, 135, 136, 168 P 40.

Venue of Action

The liability of directors of a domestic corporation created by this section under which they become answerable for its debts if they shall fail to file within the proper time the annual financial statement provided for therein, whether such debts were created before or after such failure, is in the nature of a penalty and is not based upon contract, and therefore the venue of an action to recover on such liability is, under section 93-2902, in the county where the cause of action, or some part thereof, arose. *National Supply Co.-Midwest v. Abell*, 87 M 555, 557 et seq., 289 P 577.

Id. The principal place of business of a domestic corporation was in F. county and there its annual financial statements were required to be but were not filed. It executed promissory notes in T. county in which they were made payable. The payee brought action in the latter county against the corporate directors to recover on the notes under their statutory liability. From an order granting a change of venue to F. county plaintiff appealed. Held, that the cause of the action arose in F. county where the annual statements were required to be filed, that therefore the venue was properly changed, and that the contention that, the notes being made payable in T. county, the cause of action arose in part therein, may not be sustained.

Verification

This section, before amendment, did not seem to require that the annual report of a corporation shall be acknowledged in any event, or that it shall be verified, unless possibly when, in the absence or inability of the president of the corporation to act, the vice-president signs the report in his stead. *Minneapolis Steel & Machinery Co. v. Thomas*, 54 M 132, 135, 168 P 40.

Held, in an action by a creditor of a corporation to recover from its directors for failure to file the annual report of its financial condition, that the requirement of this section that such report shall be verified by oath, is met by verification on information and belief by one of the officers enumerated in the section, in the absence of a provision that it shall be made positively. *Fisk Tire Co. v. Lanstrum et al.*, 96 M 279, 280 et seq., 30 P 2d 84.

References

Cited or applied as section 451, Civil Code, before amendment, in *State ex rel. Stiefel v. District Court*, 37 M 298, 300, 96 P 337; as chapter 63, Laws of 1907, before amendment, in *Goodrich Rubber Co. v. Helena Motor Car Co.*, 53 M 526, 529, 165 P 455; as Laws of 1909, p. 217, before amendment, in *Northern Pacific Ry. Co. v. Crowell*, 245 Fed 668, 671; *Continental Oil Co. v. Montana C. Co.*, 63 M 223, 229, 207 P 116; *First Nat. Bank v. Barto et al.*, 72 M 437 et seq., 233 P 963; *First Nat. Bank v. Cosier et al.*, 66 M 352, 354, 213 P 442; *Mitchell v. Banking Corporation of Mont.*, 83 M 581, 597, 273 P 1055.

Collateral References

Corporations 225, 391.
18 C.J.S. *Corporations* § 582; 19 C.J.S. *Corporations* § 987.
13 Am. Jur. 293, *Corporations*, §§ 166 et seq.

CHAPTER 9

PROCEDURE FOR SALE OF CORPORATE PROPERTY

- Section 15-901. Procedure for sale, lease, etc., of corporate property—call of stockholders' meeting.
- 15-902. Notice of stockholders' meeting—contents—mailing—publication.
- 15-903. Organization of meeting—vote on proposal—adoption of resolution.
- 15-904. Representation and vote to accord with articles of incorporation—two-thirds vote of outstanding stock required.
- 15-905. Secretary to enter result in minutes—copy thereof to be filed with county clerk of counties where corporation owns real estate.
- 15-906. Same—record to import notice as other recorded instruments—officers may carry out proposition.
- 15-907. General powers of directors and pending actions not affected.
- 15-908. Stockholders may adopt by-law giving directors power to sell or lease property of corporation—limitations on such authority.
- 15-909. Same—contents of resolution and notice.
- 15-910. Authority granted by by-law to exist until repealed or amended at general or special meeting of stockholders.
- 15-911. Dissolution.
- 15-912. Rights of dissenting stockholders.
- 15-913. Appeal from appraisal—payment of appraisements to dissenting stockholders and release of interest—lien of appraisal on property disposed of.

15-901. (6004) Procedure for sale, lease, etc., of corporate property—call of stockholders' meeting. The board of directors or trustees of any stock corporation heretofore or hereafter organized under the laws of the territory or state of Montana, whether formed and existing before or after the taking effect of the codes on July 1, 1895, whether solvent or insolvent, whether a going concern or otherwise, including mining corporations, shall have power, and upon request of stockholders representing at least one-half ($\frac{1}{2}$) of the capital stock outstanding and of record on the books of the corporation, and entitled, under the articles of incorporation, or amendments thereto, and the laws and constitution of Montana, to vote at the meeting hereinafter provided for, it shall be their duty to call by resolution

a meeting of the stockholders of such corporation, appearing as such upon its books, and entitled to vote at such meeting, as aforesaid, for the purpose of considering the question of selling, leasing, mortgaging, exchanging, or otherwise disposing of the whole or any part of the property and assets of every kind and description of such corporation, for property, or for the whole or part of the capital stock of any other corporation, whether domestic or foreign, or otherwise. Such meeting shall be held at the principal place of business of such corporation, and at least thirty (30) days previous notice of the time and place of such meeting shall be given to each person who appears as a stockholder upon the books of the corporation and is entitled to vote at such meeting, as aforesaid.

History: This and the following nine sections were enacted as a single section but have been divided in this code for more convenient reference. See history of sec. 15-910.

NOTE.—Section 6004, R. C. M. 1935 has been divided into sections 15-901 to 15-910. It was thought advisable to place the following annotations, made before the division, after this first section of the group.

Allegation That Contract Entered into by Lawful Authority—Sufficiency

Complaint, in an action for breach of a contract of sale of corporate mining property which also included a sale of its stock, alleging that the contract was entered into by the defendant corporation by lawful authority (this section), was sufficient at least so far as its property was concerned, irrespective of whether the sale of the stock could be enforced, and therefore a general demurrer to the complaint did not lie. *Smith v. Jack Pot Mining Co.*, 109 M 445, 452, 97 P 2d 368.

Gifts Ultra Vires

Corporations have no power to make gifts of their property; hence where the directors of a corporation after purporting to convey its property to another corporation, executed without consideration a deed of trust to a third party covering the same property and the capital stock of the second company received therefor, the transaction was void not only under this section, but as ultra vires the corporation. *Hanrahan v. Andersen*, 108 M 218, 232, 90 P 2d 494.

Operation and Effect

Under the common-law powers reserved to corporations by the proviso in this section, and enumerated in a general way in sections 15-401 and 15-801, the board of directors of a going corporation could, in the proper pursuit of its business and within the purposes of its creation, against the dissent of a minority of its stockholders, sell a leasehold interest in realty with improvements thereon, and where such sale was made before plaintiffs

had judgment against the selling corporation, they acquired no title under execution sale, and nonsuit was properly granted in their action in ejectment against the purchaser. *Wortman v. Luna Park Amusement Co.*, 61 M 89, 96 et seq., 201 P 570.

Finding that corporation, which claimed to have transferred its business to president in control thereof, had ceased to do business and was therefore not taxable held unwarranted under evidence. (Sections 15-901 to 15-911, 86-301 to 86-303.) *Rasmusson v. Eddy's Steam Bakery*, 57 F 2d 27.

Evidence showed that the president of the corporation owned all but two shares of its stock, and that directors thereof passed resolution accepting his proposal to purchase corporation's assets. The purpose of the transfer was to avoid payment of income taxes, and nothing was distributed to stockholders, and no bill of sale or deed was given, no payments made to the corporation, and the transferee did not surrender his stock. There was no compliance with the provision of this and the following sections, providing procedure by which corporation may dispose of assets or be dissolved, and there was no compliance with rules governing dealings between trustee and cestui que trust as prescribed by sections 86-301 to 86-303. *Rasmusson v. Eddy's Steam Bakery*, 57 F 2d 27.

Under this section, a corporation has power to mortgage all its property either by a two-thirds vote of its stockholders at a meeting called for that purpose, or by adopting a by-law empowering its board of directors to do so; hence, where the complaint in an action to foreclose a corporate mortgage and trust deed alleged that the corporation had "pursuant to lawful authority and corporate action of its stockholders and board of directors," etc., executed such deed, the pleading was sufficient to show authority in the corporation to mortgage its property. *Thomson v. Nygaard*, 98 M 529, 541, 41 P 2d 1.

This section does not restrict powers of corporation's officers and directors in prosecuting corporation's business with respect to transactions incident to its ordinary activities and calculated to further its continuance in business; when mining corporation could not meet terms of option to purchase mining claims within few days remaining, its officers acted as ordinarily prudent business men carrying on its ordinary business affairs without evasion of statute by conveying the claims to an individual who paid off the option and gave the corporation an option to purchase the claims from him on later date. *Northern Mining Corporation v. Trunz*, 124 F 2d 14, 19.

When Neither Directors Nor Stockholders Have Right to Sell Property Against Stockholder's Dissent

Where corporation was solvent and prosperous and well able to achieve object of its creation, neither directors nor stockholders would have right to sell corporation property against dissent of stockholder, unless authority was granted by statute; in instant case, proposition for transfer of corporate property for period of years for development purposes, held

too vague to form basis of contract against dissent of stockholder. *Schwartz v. Inspiration Gold Mining Co.*, 15 F Supp 1030.

Without Essential Compliance, Conveyance a Nullity

This section must be essentially complied with as to holding special stockholders' meetings to consider selling or otherwise disposing of the whole or any part of a corporation's property, and the conveyance was a nullity where two of such meetings were held on an eleven and five days' notice irrespective of the fact that the corporation may thereafter have maintained an office and transacted business, or had some property remaining. *Hanrahan v. Andersen*, 108 M 218, 231, 90 P 2d 494.

References

Cited or applied as section 3897, Revised Codes, in *Canyon Creek Irr. Dist. v. Martin*, 52 M 339, 344, 159 P 418; *Enterprise Sheet Metal Works v. Schendel*, 55 M 42, 52, 173 P 1059; *Pioneer M. Corp. v. Larabie Bros. Bankers*, 99 M 358, 43 P 2d 884; *Johnson v. Elliot*, 123 M 597, 218 P 2d 703.

15-902. Notice of stockholders' meeting—contents—mailing—publication. The secretary of the corporation shall make out and deposit in the United States post office, postage paid, a notice of such meeting, directed to each stockholder of record of the corporation, entitled to vote at such meeting, as aforesaid, by his name and his place of residence appearing on said records, and shall make and file his affidavit of such deposit. Such notice shall be considered as given upon the deposit of the same in the post office, as above required. The notice shall state the time, place, and the purpose of the meeting, and shall contain a complete and specific statement of the proposal to be considered and acted upon at said meeting, including in all cases where only a part of the property of such corporation is affected, a general description of the property proposed to be sold, leased, mortgaged, exchanged, or otherwise disposed of. A similar notice shall also be published at least once a week for at least four (4) consecutive weeks preceding the day of said meeting, in some newspaper of general circulation published in the county wherein the principal place of business of such corporation is located, or if there is no newspaper published in said county, then in the nearest county thereto wherein a newspaper is published, and said publication shall be proven by affidavit of the publisher or clerk of such newspaper, filed with the secretary of such corporation.

History: See history of sec. 15-910.

15-903. Organization of meeting—vote on proposal—adoption of resolution. Upon the day appointed for said meeting, if stockholders representing at least two-thirds ($\frac{2}{3}$) of the whole number of shares of the capital stock of the corporation then outstanding, and of record on the books of the corporation, and entitled to vote at such meeting, as aforesaid, appear in

person or by agents or proxies filed with the secretary, the stockholders shall organize by electing one (1) of their number chairman, and some suitable person secretary. Thereupon any proposition for the sale, lease, mortgaging, exchange, or other disposition of the whole or any part of the property and assets of every kind and description of such corporation, for property, or for the whole or part of the capital stock of any other corporation, whether domestic or foreign, or otherwise, may be considered and acted upon by said meeting, and if stockholders representing at least two-thirds ($\frac{2}{3}$) of the whole number of shares of the capital stock of said corporation then outstanding, and of record on the books of the corporation, and entitled, as aforesaid, to vote at such meeting, appearing at said meeting in person or by agents or proxies, as above provided, vote in favor of any such proposition, whether proposed by the directors or trustees, or not, as said stockholders may see fit, which proposition shall be in the form of a resolution specifying the particulars thereof and entered on the minutes of said stockholders' meeting, the said proposition or resolution shall be taken and adopted as the act of the corporation, and shall be carried out as such, and shall be approved and adopted by the board of directors or trustees.

History: See history of sec. 15-910.

15-904. Representation and vote to accord with articles of incorporation—two-thirds vote of outstanding stock required. If the corporation shall have, by provision in its original or amended articles of incorporation, fixed the proportions of each or any class of capital stock, then outstanding and entitled to vote, as aforesaid, which is required to be represented at the meeting, and voted in favor of the adoption of any such proposition or resolution, then the representation and vote required shall also be in accordance with such provision in such original or amended articles of incorporation, as well as in accordance with the foregoing provisions that the holders of at least two-thirds ($\frac{2}{3}$) of the whole number of shares of the capital stock of the corporation, then outstanding and entitled to vote, as aforesaid, be present or represented and vote in favor of the adoption of such proposition or resolution.

History: See history of sec. 15-910.

15-905. Secretary to enter result in minutes—copy thereof to be filed with county clerk of counties where corporation owns real estate. The secretary of such meeting shall enter upon the minutes of said stockholders' meeting the total number of shares, and the number of shares of each class, voted for or against the proposition or resolution, and by whom voted, and stockholders voting against said proposition or resolution shall be taken as dissenting therefrom. Upon the adoption of any proposition or resolution such as above referred to, by the stockholders' meeting, the secretary of the meeting shall make out a true and complete copy of the minutes of the stockholders' meeting, which shall be signed by the chairman of such meeting, and attested by said secretary and verified by them and acknowledged as required in the case of conveyance of real estate, and shall file the same for record in the office of the county clerk and recorder of the county wherein the principal office or place of business of such corporation is situated, and also in the office of the county clerk and recorder

of any other counties wherein any of the real property included in the proposition or resolution adopted by said stockholders' meeting is situated.

History: See history of sec. 15-910.

15-906. Same—record to import notice as other recorded instruments—officers may carry out proposition. Said record shall impart notice and have the same effect as other instruments required by law to be recorded, and such copies so filed and recorded, or the record thereof, or the certified copy of such record, shall be prima facie evidence of the matters and facts therein stated, and thereupon, and upon the adoption and approval by the board of directors or trustees of the corporation of such proposition or resolution, the corporation and its officers shall have full power and authority to do all acts and to execute all conveyances or other instruments in writing which are necessary or proper to carry out the said proposition or resolution, and the sale, lease, mortgage, exchange, or other conveyance of the whole or any part of the property of said corporation, authorized by said proposition or resolution, shall thereupon take effect and have the same force as if all the stockholders of the corporation had consented thereto.

History: See history of sec. 15-910.

15-907. General powers of directors and pending actions not affected. Nothing contained in this act shall be deemed to limit or restrict the powers of the board of directors or trustees of such corporation in relation to the disposition of property or the conduct of business; nor shall this act be so construed as to affect any cases now pending in the courts of this state or of the United States.

History: See history of sec. 15-910.

15-908. Stockholders may adopt by-law giving directors power to sell or lease property of corporation—limitations on such authority. At any meeting of the stockholders of any corporation called and noticed in the manner provided by this chapter, the stockholders may, by the vote of the holders of two-thirds ($\frac{2}{3}$) of the issued and outstanding stock of record on the books of the corporation, and entitled, under the articles of incorporation, and the amendments thereto, and the laws and constitution of Montana, to vote at the meeting, in lieu of the resolution hereinbefore provided for, adopt a by-law giving the board of directors of such corporation such general authority to sell, lease, mortgage, exchange or otherwise dispose of the whole or any part of the property and assets of every kind and description of such corporation, for property, or for the whole or part of the capital stock of any other corporation, whether domestic or foreign, or otherwise, as the stockholders by such by-law may prescribe; provided that, if the corporation shall have, by provision in its original or amended articles of incorporation, fixed the proportions of each or any class of capital stock, then outstanding and entitled to vote, as aforesaid, which is required to be represented at the meeting, and voted in favor of the adoption of such by-law, then the representation and vote required shall also be in accordance with the provision in such original or amended articles of incorporation, as well as in accordance with the foregoing provisions that the holders of at least two-thirds ($\frac{2}{3}$) of the issued and outstanding stock of record on the books of

the corporation, and entitled to vote, as aforesaid, must vote in favor of the adoption of such by-law.

History: See history of sec. 15-910.

15-909. Same—contents of resolution and notice. The resolution calling the meeting and the notice mailed to stockholders and published shall state that the meeting is called for the purpose of considering the adoption of a by-law empowering the board of directors of the corporation to sell, lease, mortgage, exchange, or otherwise dispose of the whole or any part of the property and assets of every kind and description of such corporation, for property, or for the whole or part of the capital stock of any other corporation, whether domestic or foreign, or otherwise. In all other respects notice shall be given and the meeting shall be had and a copy of the minutes thereof shall be filed as provided by this chapter.

History: See history of sec. 15-910.

15-910. Authority granted by by-law to exist until repealed or amended at general or special meeting of stockholders. In case such by-law be adopted at said meeting the board of directors shall thereafter have the authority granted thereby so long as said by-law shall remain in force, but any by-law so adopted may be repealed by a vote of the holders of two-thirds ($\frac{2}{3}$) of the issued and outstanding stock of the corporation entitled under the articles of incorporation, and amendments thereto, and the laws and constitution of Montana, to vote at a meeting hereinabove, in this chapter, provided for, at any annual meeting of the stockholders or at any special meeting of the stockholders called in the manner provided by this chapter.

History: En. Sec. 1, Ch. 103, L. 1905; re-en. Sec. 3897, Rev. C. 1907; amd. Sec. 1, Ch. 80, L. 1921; re-en. Sec. 6004, R. C. M. 1921; amd. Sec. 1, Ch. 42, L. 1931. Cal. Civ. C. Sec. 361a. 19 C.J.S. Corporations §§ 1097, 1171-1223, 1240-1247, 1249. 13 Am. Jur., Corporations, p. 817, §§ 801-809; p. 835, §§ 830-836; p. 1111, §§ 1214-1222.

Collateral References

Corporations—458, 459, 475-482½.

15-911. (6005) Dissolution. If a disposition shall be made by sale, as above provided, of the whole of the property of such corporation, the corporation shall thereby be dissolved, and its affairs shall be wound up, as provided for in other cases of the dissolution of corporations.

History: En. Sec. 2, Ch. 103, L. 1905; re-en. Sec. 3898, Rev. C. 1907; re-en. Sec. 6005, R. C. M. 1921. 392, 133 P 681; Rasmusson v. Eddy's Steam Bakery, 57 F 2d 27.

References

Cited or applied as section 3898, Revised Codes, in Daily v. Marshall, 47 M 377,

Collateral References

Corporations—603. 19 C.J.S. Corporations § 1668.

15-912. (6006) Rights of dissenting stockholders. Any stockholder who shall not, at said stockholders' meeting, have voted for or authorized the proposition or resolution for the disposition of property which may have been adopted at such stockholders' meeting, may, within twenty days after the date of the stockholders' meeting, give written notice to the said corporation that he does not assent thereto, and also a like notice to the grantee or vendee, or any agent or representative of such grantee or vendee;

provided, that such grantee or vendee, or agent or representative of such grantee or vendee, be within the state and demand payment of the value of his stock, and within ten days after service of said notice he must, or the said corporation, or its grantee or vendee, may, make application in the district court of the county where the principal place of business of the corporation is situated to have the value of his stock fixed and appraised, of which application at least ten days' previous notice must be given by the person so applying to the other parties. The notices hereinbefore provided for may be served in the manner provided by law for the service of summons in cases in the district court. Upon said application, the said district court shall appoint three competent and disinterested persons as appraisers, and designate the time and place of their first meeting to appraise the value of the stock of such dissenting stockholders, and give them such directions as the said court may think proper. The court may fill any vacancies in the board of appraisers, occurring by refusal or neglect to serve, or otherwise. Said appraisers shall meet at the time and place designated by the court, and they or any two of them shall take an oath to honestly and faithfully discharge their duties, and shall hear and take evidence in relation to the value of the stock of such dissenting stockholder at the time of his dissent, and find the value thereof, and return and file their report and appraisal with the clerk of said court. The charges and expenses of said appraisal shall be paid by the corporation, or its grantee or vendee.

History: En. Sec. 3, Ch. 103, L. 1905; re-en. Sec. 3899, Rev. C. 1907; re-en. Sec. 6006, R. C. M. 1921.

Operation and Effect

A stockholder in a reservoir company, a corporation organized for profit, with power to sell its assets upon a proper vote, who, upon a sale having been made, took no timely steps to assail its legality, nor brought suit until after the lapse of five

years, was estopped by his delay, under this section and the next succeeding section, from questioning the proceedings leading to the sale. *Canyon Creek Irr. Dist. v. Martin*, 52 M 339, 344, 159 P 418.

Collateral References

Corporations \S 182.

18 C.J.S. Corporations \S 512.

13 Am. Jur. 1117, Corporations, $\S\S$ 1223 et seq.

15-913. (6007) Appeal from appraisal—payment of appraisements to dissenting stockholders and release of interest—lien of appraisal on property disposed of. Either party to the appraisal and award of such appraisers may, within thirty days from the filing of the same and service of notice thereof, appeal from such award to the district court of the county in which the same is made and filed, and thereupon the value of such stock shall be reassessed by a jury in the same manner as appeals are taken and trials had on appeals from the assessment of commissioners in condemnation proceedings provided by law. When such appraisal or award shall become final, the court shall enter judgment in favor of such dissenting stockholders and against the corporation and its grantee or vendee for the amount of said award, with expenses and costs of proceedings, and execution may be issued on said judgment as in other cases. The judgment may also provide for the sale of the property affected by the lien hereinafter provided for. The claim of such dissenting stockholder for compensation and costs, as aforesaid, and the appraisal and award and judgment thereon shall be and remain a lien upon all the real property of the corporation so conveyed or disposed of in pursuance of the stock-

holders' resolution, and shall be prior and superior to the rights of the grantee or vendee to all such property; but the claims of all dissenting stockholders for compensation, and their several appraisements, awards, and judgment, shall be equal liens upon said property, without precedence or priority between themselves. When the amount of such appraisements and costs shall have been paid to or collected by such dissenting stockholder, or deposited with the clerk of the said court for him, he shall cease to have any interest in said stock or in the corporate property of such corporation which may have been sold or disposed of in pursuance of the resolution of the stockholders' meeting, as herein provided, and the stock of such dissenting stockholders shall thereupon become the property of the party satisfying the said judgment or appraisal, unless otherwise provided for by contract between such corporation and its grantee.

History: En. Sec. 4, Ch. 103, L. 1905; re-en. Sec. 3900, Rev. C. 1907; re-en. Sec. 6007, R. C. M. 1921.

References

Cited or applied as section 3900, Revised Codes, in Canyon Creek Irr. Dist. v. Martin, 52 M 339, 344, 159 P 418.

CHAPTER 10

CORPORATE RECORDS

Section 15-1001. Corporate records—to consist of what, and how kept.

15-1002. Other records to be kept by corporations for profit, and others.

15-1001. (6008) Corporate records—to consist of what, and how kept.

All corporations for profit are required to keep a record of all their business transactions; a journal of all meetings of their directors, members, or stockholders, with the time and place of holding the same, whether regular or special, and if special, its object, how authorized, and the notice thereof given. The record must embrace every act done or ordered to be done; who were present, and, in the record of directors' meetings, who absent. If requested by any director, member, or stockholder, the time must be noted when he entered the meeting or obtained leave of absence therefrom. On a similar request, the ayes and noes must be taken on any proposition, and a record thereof made. On a similar request, the protest of any director, member, or stockholder, to any action or proposed action, must be entered in full, and such records must be open to the inspection of any director, member, stockholder, or creditor of the corporation; provided, that in lieu of embracing in the record of stockholders' or members' meetings who were present, a list showing the names of those present at any such meeting, certified by the chairman and secretary thereof, may be filed and kept in the office of the secretary of the corporation.

History: En. Sec. 540, Civ. C. 1895; re-en. Sec. 3902, Rev. C. 1907; re-en. Sec. 6008, R. C. M. 1921; amd. Sec. 1, Ch. 47, L. 1931. Cal. Civ. C. Sec. 377.

Cross-Reference

Books, violations respecting, secs. 94-2309, 94-2310.

Operation and Effect

It will be presumed that all entries

made in the books of the corporation against the president and controlling stockholder were rightfully made, such books being therefore admissible against him and his personal representatives in an accounting against him arising out of the fraudulent purchase of certain shares of the corporation's stock from the executor of a deceased owner. Smith v. Moore, 199 Fed 689, 697.

References

Aetna C. & S. Co. v. American B. Co., 63 M 474, 482, 208 P 921; Cobb et al. v. Lee, 80 M 329, 338, 260 P 722; State v. State Bank of Moore et al., 90 M 539, 551 et seq., 4 P 2d 717.

Collateral References

Corporations—59, 181, 395.

18 C.J.S. Corporations §§ 191, 501 et seq.; 19 C.J.S. Corporations § 988.
13 Am. Jur. 293, Corporations, §§ 166 et seq.

Purposes for which stockholder or officer may exercise right to examine corporate books and records. 15 ALR 2d 11.

15-1002. (6009) Other records to be kept by corporations for profit, and others. In addition to the records required to be kept by the preceding section, corporations for profit must keep a book, to be known as the “stock and transfer book,” in which must be kept a record of all stock; the names of the stockholders or members, alphabetically arranged; instalments paid or unpaid; assessments levied and paid and unpaid; a statement of every alienation, sale, or transfer of stock made, the date thereof, and by and to whom; and all such other records as the by-laws prescribe. Corporations for religious and benevolent purposes must provide in their by-laws for such records to be kept as may be necessary. Such stock and transfer book must be kept open to the inspection of any stockholder, member, or creditor.

History: En. Sec. 541, Civ. C. 1895; re-en. Sec. 3903, Rev. C. 1907; re-en. Sec. 6009, R. C. M. 1921. Cal. Civ. C. Sec. 378.

References

Cobb et al. v. Lee, 80 M 329, 338, 260 P 722; State v. State Bank of Moore et al., 90 M 539, 551 et seq., 4 P 2d 717.

CHAPTER 11**DISSOLUTION OF CORPORATIONS BY QUO WARRANTO—BY DECREE OF COURT—BY ACT OF DIRECTORS AND BY OTHER METHODS**

- Section 15-1101. Dissolution of corporations.
15-1102. Winding up the affairs of and disposing of the property of dissolved corporations.
15-1103. Secretary of state to notify corporation of expiration of charter.
15-1104. Directors to wind up business of expired corporation.
15-1105. Resolution providing for, and certificate authorizing continuation of corporate existence to wind up affairs—term of extension—fee.
15-1106. Authority granted by certificate.
15-1107. Limitation of actions by person claiming through dissolved corporation.
15-1108. Corporations—how dissolved.
15-1109. Application—what to contain.
15-1110. Application—how signed and verified.
15-1111. Filing application and publication of notice.
15-1112. Objections may be filed.
15-1113. Hearing of applications—directors as trustees of creditors and stockholders—copy of judgment to be filed with secretary of state.
15-1114. Judgment roll and appeals.
15-1115. Voluntary dissolution of corporations.
15-1116. Directors shall file statement, where—contents of statement.
15-1117. Effect of filing statement.
15-1118. Same with reference to foreign corporations.

15-1101. (6010) Dissolution of corporations. A corporation is dissolved:

1. By expiration of the time limited by its charter provided its corporate existence is not extended in the manner provided by law; or

2. By a judgment of dissolution in the manner provided by sections 93-6401 to 93-6426, governing quo warranto proceedings and in the manner provided by sections 15-1108 to 15-1114, governing voluntary dissolution of corporations by decree of court; or

3. By an act of the legislative assembly; or

4. A corporation which has ceased to transact business and which has no assets may likewise be dissolved by the directors in the manner provided by sections 15-1115 to 15-1118.

History: En. Sec. 560, Civ. C. 1895; re-en. Sec. 3905, Rev. C. 1907; re-en. Sec. 6010, R. C. M. 1921; amd. Sec. 1, Ch. 8, L. 1931; amd. Sec. 1, Ch. 33, L. 1947. Cal. Civ. C. Sec. 399.

NOTE.—Subdivision 4 of the above section was added by the 1921 code commissioner to make the section conform to later enactments.

Cross-References

Appointment of receivers, sec. 93-4403 to 93-4407.

Quo warranto proceedings, secs. 93-6401 to 93-6426.

Operation and Effect

When the limit fixed by statute for the existence of a corporation expires, the corporation is ipso facto dissolved, and it cannot thereafter exercise any power, except such as the law confers, in order to enable it to wind up its affairs. *Merges v. Altenbrand*, 45 M 355, 362, 123 P 21.

After a corporation has been lawfully organized, its character, as such, cannot be inquired into collaterally at the instance of a private citizen in a controversy between him and it, and its legal capacity can be brought in question by the state only through its proper officer, in compliance with section 15-808, and then only for one of the causes prescribed by section 93-6402. *Barnes v. Smith*, 48 M 309, 316, 137 P 541.

Id. After a corporation has been lawfully organized, it continues to exist until its life expires by limitation, or it has

been dissolved by one of the methods prescribed by this section.

Stockholders' Meetings Not Statutory Requirement for Organization of Business Corporation

The holding of a stockholders' meeting is not one of the requirements made by section 15-111, for organizing business corporations, nor does the failure to hold such meetings within the state, constitute, under this section, an automatic dissolution of the corporation, without reference to the question whether it would justify a direct proceeding for dissolution. *Golden Rod Mining Co. v. Bukvich*, 108 M 569, 579, 92 P 2d 316.

References

Cited or applied as section 3905, Revised Codes, in *Smith v. Iron Mountain Tunnel Co.*, 46 M 13, 17, 125 P 649; *Daily v. Marshall*, 47 M 377, 392, 133 P 681; *Fitzpatrick v. Stevenson*, 104 M 439, 444, 67 P 2d 310.

Collateral References

Corporations—592-607.

19 C.J.S. Corporations §§ 1651-1682.

13 Am. Jur. 1157, Corporations, §§ 1285 et seq.

Dissolution of corporation which executed mortgage, or purchased property subject to it. 128 ALR 572.

Power of equity to dissolve corporation on ground of intracorporate deadlock or dissension. 13 ALR 2d 1260.

15-1102. (6011) Winding up the affairs of and disposing of the property of dissolved corporations. The directors of any dissolved corporations who are such at the time such corporation shall become dissolved, become upon such dissolution the trustees of the creditors and stockholders of such corporation.

(1) Such trustees shall settle the affairs of such corporation, liquidate its assets and apply the proceeds of such liquidation to the payment of the expenses of such trustees, to the payment of its debts and other obligations, and distribute any surplus remaining to the stockholders of such corporation, in a proceeding in the district court of the county in which the principal place of business of such corporation was situated at the time of its dissolution.

(2) The procedure provided by Title 91 for the probate of estates of deceased persons shall be followed in such proceeding, except that notice to creditors shall be published in each county in the state of Montana in which any real estate owned by such corporation at the time of its dissolution shall be situated, and that the time for presentation of claims shall in all cases be four (4) months from the date of the first publication of such notice; that sales of real property may be for cash, or upon option, with or without lease; that notice of any petition for final distribution shall be directed to the same persons and shall be served in the same manner as provided by chapter 62 of Title 93 in the case of summons in an action to quiet title under that chapter as against the world; and that the money or property of such corporation subject to distribution shall be distributed pro rata to those persons who shall, upon the hearing of such petition for distribution, establish their ownership of capital stock of such corporation, according to their respective stock ownerships, as so established in such proceeding.

(3) The court may, if it shall determine that it is to the best interests of the stockholders, distribute to such stockholders any property remaining after the payment of expenses of administration and of the debts of such corporation, without requiring that the same be turned into cash.

(4) The court shall also have power, and, upon the petition of the holders of the majority of the stock held by the persons who shall in such proceeding establish their ownership of stock of such corporation, it shall be its duty, to direct the transfer of the property of such corporation, subject to distribution, to a new corporation organized under the laws of the state of Montana, for the same purposes for which such dissolved corporation was organized, in exchange for all of the authorized capital stock of such new corporation, such capital stock to be issued pro rata to the persons so establishing their right to receive distribution of the property of said dissolved corporation, in accordance with the number of shares established by them respectively in the proceeding above provided for.

(5) All conveyances or other transfers of the property of such dissolved corporation executed and delivered by such trustees in accordance with the provisions of this section shall be effective to convey the legal title to the property described therein.

(6) In the case of a corporation composed of members instead of stockholders the same procedure shall apply, and in any such case, for the purposes of this section, the word "stockholder" shall mean "member" and the word "stock" or the words "capital stock" shall mean "interest," "units" or other words descriptive of the interest of such members in such corporation and its assets.

(7) The term "trustees" as herein used shall include the singular as well as the plural.

(8) A corporation shall be deemed to be dissolved within the meaning of this section whenever its corporate powers shall have been completely lost by lapse of time, by the final judgment of a court of competent jurisdiction, by the action of its stockholders or members, or in any other manner.

(9) In the event all of the directors of such dissolved corporation, who were such at the time of the dissolution of such corporation, shall have died, resigned, or refuse or be unable to act, the district court of the county in which was situated the principal place of business of such corporation at the time of its dissolution, shall, upon petition of a trustee, stockholder or creditor of such corporation, and upon a sufficient showing of the necessary facts, appoint a trustee or trustees who shall have the same powers and duties as are by this section conferred and imposed upon the directors of such corporation who were such at the time of the dissolution of such corporation.

(10) Any receiver or trustee appointed under the provisions of chapter 44 of Title 93 shall be governed by the provisions of this section as well as by the provisions of said chapter 44.

(11) Fees shall be allowed to the trustees and their attorneys in accordance with the provisions of chapter 34 of Title 91.

(12) The provisions of this section shall apply to any corporation heretofore or hereafter dissolved and whether or not it owes debts or has other unfinished business, and such proceeding may be for the sole purpose of disposing of the assets of such corporation in one of the methods prescribed and permitted by this section.

(13) In the case of a corporation which shall have become dissolved at or prior to the passage and approval of this act but has no affairs requiring a settlement or liquidation but owned real property which has not been disposed of, any stockholder may, in lieu of the proceeding hereinabove authorized, bring an action under the provisions of chapter 62 of Title 93 for the purpose of determining the ownership of the real estate of such corporation.

(14) In such case the decree shall award such real estate to the persons who shall in such proceeding establish their ownership of capital stock of such corporation, pro rata, according to their respective stock ownerships, as so established in such proceeding.

(15) In such action the court may allow the plaintiff a reasonable attorney's fee for bringing and prosecuting such action.

(16) The surviving trustees of any dissolved corporation or the trustees appointed in lieu thereof as provided by statute may sue and be sued with the same effect as such dissolved corporation might have sued or have been sued had it not become dissolved.

(17) The term "stockholder," as used in this section, shall include not only stockholders of record upon the books of such corporation, but their successors in interest in the ownership of stock of such corporation.

History: En. Sec. 561, Civ. C. 1895; re-en. Sec. 3906, Rev. C. 1907; amd. Sec. 1, Ch. 125, L. 1919; re-en. Sec. 6011, R. C. M. 1921; amd. Sec. 2, Ch. 8, L. 1931; amd. Sec. 1, Ch. 198, L. 1937. Cal. Civ. C. Sec. 400.

Action in Tort Against Statutory Trustees Triable To Jury

An action by a stockholder in a dissolved corporation against its statutory trustees in their individual capacity to recover damages for breach of obligation to wind up affairs, engaging in business in

conjunction with a bank causing trust estate to become insolvent, held one in tort and as such triable to a jury, and not one in equity as for an accounting, triable without a jury, and necessity of introduction of books and records no obstacle. State ex rel. Word v. District Court, 112 M 458, 459, 117 P 2d 494.

Applies Although No Assets

While there cannot be a trust without there being trust property in existence, this section making the directors of a dissolved bank "trustees"—in fact but the

successors in interest, with power to sue and be sued in behalf of the corporation—to settle and liquidate its affairs, applies even though there be no assets to be administered. *Fitzpatrick v. Stevenson*, 104 M 439, 444, 67 P 2d 310.

Creditor's Remedy Is by Petition in Probate

Where a creditor of a dissolved corporation who claimed that its directors had failed in their duty as trustees of its creditors and stockholders, filed a document denominated "Petition and Affidavit for Order to Show Cause," and the prayer was that the court make an order requiring the directors to show cause why they should not proceed forthwith to the liquidation of their trust as such trustees, held, on application for a writ of supervisory control to review the court's action in dismissing the proceeding, that relator's remedy under this section is by petition in probate for appointment of the directors or some others as trustees to proceed under the statute. *State ex rel. Stoddard v. District Court*, 108 M 51, 52, 88 P 2d 34.

Failure To Allege "Other Persons Not Appointed"

The complaint in an action against the trustees of a dissolved state bank to recover damages from the bank for breach of an option contract to purchase land held by the bank, held not insufficient for failure to allege that other persons were not appointed in place of the directors of the bank to act as trustees to settle and liquidate its affairs, where dissolution voluntary and not by judicial proceedings. *Fitzpatrick v. Stevenson*, 104 M 439, 443, 67 P 2d 310.

Operation and Effect

A receiver should not be appointed to take charge of a building and loan company, when the directors are acting as trustees to wind up its affairs, after its charter has expired, unless it appears that the party complaining has been, or is about to be, injured by unwarranted procedure on the part of such trustees. *Ferrell v. Evans*, 25 M 444, 454, 65 P 714.

The dissolution of a corporation by the expiration of its term of existence does not authorize a court to take its property from trustees, not charged with wrongdoing, and appoint a receiver. *Merges v. Altenbrand*, 45 M 355, 366, 123 P 21.

Under this section, statutory trustees of a defunct corporation must settle and liquidate its affairs, that is, dispose of and wind up its affairs by getting in its assets and settling with its debtors and creditors. In an action of debt against such trustees, defendants challenged the

jurisdiction of the court over the subject matter of the action by interposing a plea in bar to the effect that by order of court the property of the trust had been sold and its affairs wound up and their trust terminated. The action against them was pending at the time the order of sale was made, which did not purport to discharge them of their trust. In their answer they interposed a counterclaim. Held, that the facts disclosed by the pleadings showed that defendants had not completed their duties as trustees and that a demurrer to their plea in bar was properly sustained. *Gilna v. Barker et al.*, 78 M 357, 360 et seq., 254 P 174.

Id. A party is bound by his pleading; hence where statutory trustees of a dissolved mining corporation in an action of debt arising out of the leasing of its mining claims on appeal contended that under this section, they were without power to lease and share with the lessee the profits of his operations, but in their answer had alleged that they were charged with the duty of carrying on development operations, they were bound by the latter allegation, the lease contemplating such operations.

Held, that one of five statutory trustees in charge of the affairs of a dissolved corporation may not prosecute an appeal to the supreme court from an order appointing a receiver for the corporation against the wishes of his cotrustees, irrespective of whether unit or majority rule of action controls under certain statutes. *Union Bank etc. Co. v. Penwell et al.*, 99 M 255, 267, 42 P 2d 457.

Ownership of Stock—Determination

In action to determine ownership of corporate stock of dissolved corporation letter from one of organizers showing original distribution of stock was admissible in evidence. *Henningsen v. Stromberg*, 124 M 185, 221 P 2d 438, 448.

In action to determine ownership of corporate stock of dissolved corporation assignment of shares of stock to ancestor of one of the parties to the action was admissible in evidence. *Henningsen v. Stromberg*, 124 M 185, 221 P 2d 438, 448.

Recitals in inventory and appraisal of estate of deceased stockholder and in decree of distribution are not competent evidence that deceased owned that amount of stock at time of his death, but it was a circumstance which would be considered with letter showing original distribution of stock to show that parties acted upon such letter and treated it as the proper basis for the distribution of stock. *Henningsen v. Stromberg*, 124 M 185, 221 P 2d 438, 448.

Proof by a party that he at one time owned stock in a corporation shifts, the

burden to the adversary to show that he parted with his title thereto before he can be deprived of the right to have certificates issued to him. *Henningsen v. Stromberg*, 124 M 185, 221 P 2d 438, 448.

Ownership of Stock—Unissued

A person may be the owner of stock in a corporation even though the certificates of stock have not been issued. *Henningsen v. Stromberg*, 124 M 185, 221 P 2d 438, 448.

Ownership of Stock—Unissued—Statute of Limitations

Statute of limitations does not bar a claim for certificates of stock which were unissued until the stockholder is notified that his right to the stock is disputed. *Henningsen v. Stromberg*, 124 M 185, 221 P 2d 438, 448.

Property of Corporation Subject to Attachment or Levy of Execution

Held, that it is the public policy of this state that the property of a dissolved corporation, other than a banking corporation, while being administered by its directors as trustees for the creditors and stockholders under this section, is subject to attachment or levy of execution in the same manner and in the same cases where those writs would run against the property of the corporation itself. *Mieyr v. Federal Surety Co. et al.*, 97 M 503, 507 et seq., 34 P 2d 982.

Purpose to Safeguard Rights of Creditors

The chief purpose of the provision in this section that directors of a dissolved

corporation acting as trustees of the creditors and stockholders thereof shall settle corporate affairs and apply proceeds of liquidation to payment of debts, etc. is to safeguard the rights of creditors against attempts by the directors to cut off their claims by secret or summary proceedings and to dispose of corporate assets by an unauthorized conveyance. In re *Courtney Brothers, Inc.*, 110 M 289, 294, 100 P 2d 471.

Trustees Engaging in Business Instead of Winding Up Affairs—Stockholder's Right of Action

A stockholder of a dissolved corporation may maintain an action in tort in his own behalf for damages against its former directors as trustees, who instead of winding up its affairs as required by this section, engaged in a business enterprise in conjunction with a bank with an alleged fraudulent design, which brought on insolvency and depreciation of the corporation's stocks and bonds. Other stockholders and creditors need not be joined. *Word v. Union Bank & Trust Co.*, 111 M 279, 281, 107 P 2d 1083.

References

Cited or applied as section 3906, Revised Codes, before amendment, in *Barker v. Edwards*, 259 Fed 484, 488.

Collateral References

Corporations—592-630.

19 C.J.S. Corporations §§ 1638-1782.

Power of corporation after expiration or forfeiture of its charter. 47 ALR 1288.

15-1103. (6011.1) Secretary of state to notify corporation of expiration of charter. It shall be the duty of the secretary of state to notify every corporation hereafter organized not less than three months, nor more than six months before the date of the expiration of its charter when its charter shall expire, which notice shall be given by registered letter addressed to such corporation at its principal place of business, as it appears from the articles of incorporation.

History: En. Sec. 1, Ch. 117, L. 1929.

Collateral References

Corporations—36.

18 C.J.S. Corporations § 78.

15-1104. (6011.2) Directors to wind up business of expired corporation. If such corporation does not extend the term of its existence as provided by law, or if it is at the expiration of the term of such existence, the corporation shall cease to use the corporate name and its business shall be wound up by the trustees or directors in their names as such trustees or directors.

History: En. Sec. 2, Ch. 117, L. 1929.

Collateral References

Corporations—619.

19 C.J.S. Corporations §§ 1744-1746.

15-1105. (6011.3) Resolution providing for, and certificate authorizing continuation of corporate existence to wind up affairs—term of extension—fee. If the directors or trustees of any corporation desire to continue the use of the corporate name and continue the corporate existence for the purpose of winding up the business of such corporation, they shall at a regular meeting, or a meeting called for that purpose, pass a resolution declaring its purpose to continue the corporate existence and the use of the corporate name for the purpose of winding up the business of the corporation only, and file such resolution in the office of the clerk and recorder of the county wherein it is located and its office and principal place of business, and file a certified copy thereof in the office of secretary of state and pay a fee of five per centum (5%) of the amount paid for filing the original articles of incorporation, and the secretary of state shall thereupon issue a certificate certifying the corporate existence of such corporation is extended for a period of three years for the purpose of winding up its business.

History: En. Sec. 3, Ch. 117, L. 1929.

Collateral References

Corporations 618.

19 C.J.S. Corporations § 1743.

15-1106. (6011.4) Authority granted by certificate. Upon the issuance of such certificate the directors shall be authorized to use the corporate name for the purpose of winding up the business of such corporation, may transact all such business in the name of the corporation, sue and be sued, make contracts, convey real estate and other property and use the corporate seal, and for the purpose of winding up the business of the corporation, the existence of said corporation shall be extended for a further period of three years.

History: En. Sec. 4, Ch. 117, L. 1929.

15-1107. (6011.5) Limitation of actions by person claiming through dissolved corporation. Whenever any corporation organized under the laws of Montana or any foreign corporation owning real property in Montana or any interest therein, shall have been dissolved, either by expiration of the period limited in its charter or by decree of dissolution, or in any other manner whatsoever, no action for the recovery of any real property owned by such corporation or for possession thereof or for rents or profits of the same, shall be maintained by anyone claiming under or through such corporation, either as stockholder, officer, director, trustee or otherwise, unless such action is instituted within ten (10) years from and after the date of dissolution of such corporation.

History: En. Sec. 1, Ch. 145, L. 1935.

interested in. *Fiers v. Jacobson*, 123 M 242, 211 P 2d 968.

Waiver of Written Option

Where there was a written contract of lease with option to purchase, a waiver of such option could not be shown by oral testimony that lessee prior to time for exercising option made statements that he did not intend to purchase the property if he could get certain other property he was

References

Cited or applied in *Barcus v. Galbreath*, 122 M 537, 207 P 2d 559, 561.

Collateral References

Corporations 630(2).

19 C.J.S. Corporations § 1775.

15-1108. (9922) Corporations—how dissolved. A corporation may be dissolved by the district court of the county where its principal place of business is situated, upon its voluntary application for that purpose.

History: En. Sec. 2190, C. Civ. Proc. 1895; re-en. Sec. 7323, Rev. C. 1907; re-en. Sec. 9922, R. C. M. 1921. Cal. C. Civ. Proc. Sec. 1227.

References

Cited or applied as section 7323, Revised Codes, in *Smith v. Iron Mountain Tunnel Co.*, 46 M 13, 17, 125 P 649.

Collateral References

Corporations—610 et seq.
19 C.J.S. Corporations § 1684 et seq.
13 Am. Jur. 1179, Corporations, § 1322.

Right of holders of preferred stock in respect of dividends on dissolution. 6 ALR 822.

Inherent power of equity, at instance of a stockholder, to appoint receiver for, or to wind up, a solvent, going corporation, on ground of fraud, mismanagement, or dissensions. 43 ALR 244.

Setoff as between dividends from assets of insolvent bank or other corporation and liability of creditors as stockholders. 91 ALR 326.

15-1109. (9923) Application—what to contain. The application must be in writing, and must set forth:

1. That at a meeting of the stockholders or members called for that purpose, the dissolution of the corporation was resolved upon by a two-thirds vote of all the stockholders or members;

2. That all claims and demands against the corporation have been satisfied and discharged.

History: En. Sec. 2191, C. Civ. Proc. 1895; re-en. Sec. 7324, Rev. C. 1907; re-en. Sec. 9923, R. C. M. 1921. Cal. C. Civ. Proc. Sec. 1228.

Not Res Judicata on Claim for Personal Services Rendered Prior to Dissolution

Held, that court's decree, finding all allegations of the petition setting forth, *inter alia*, as required by this section, that all claims and demands against the cor-

poration had been satisfied and discharged, were true, was not *res judicata* as to a claim thereafter made for personal services rendered prior to dissolution, in view of the provision of section 15-1202, that the dissolution shall not take away or impair any remedy given against the corporation for any liability previously incurred. In *re Courtney Brothers, Inc.*, 110 M 289, 292, 100 P 2d 471.

15-1110. (9924) Application—how signed and verified. The application must be signed by a majority of the board of trustees, directors, or other officers having the management of the affairs of the corporation, and must be verified in the same manner as a complaint in a civil action.

History: En. Sec. 2192, C. Civ. Proc. 1895; re-en. Sec. 7325, Rev. C. 1907; re-en. Sec. 9924, R. C. M. 1921. Cal. C. Civ. Proc. Sec. 1229.

15-1111. (9925) Filing application and publication of notice. If the court is satisfied that the application shows conformity with the provisions of sections 15-1108 to 15-1110, the judge thereof must order said application to be filed with the clerk of the court and must order the clerk to give notice of said filing for a period of time to be fixed by the court, which period shall be not less than thirty nor more than fifty days in duration. Said notice shall be given by publication once a week during the period so fixed by the court, in some newspaper published in the county, and if there is no newspaper so published in the county, then by notices posted, by the clerk in three public places in the county for the period so fixed by the court. Said notice shall state the fact of the filing of said application and the time during which objections thereto may be filed with the clerk.

History: En. Sec. 2193, C. Civ. Proc. Sec. 9925, R. C. M. 1921; amd. Sec. 1, 1895; re-en. Sec. 7326, Rev. C. 1907; re-en. Ch. 5, L. 1947. Cal. C. Civ. Proc. Sec. 1230.

15-1112. (9926) Objections may be filed. At any time before the expiration of the time of publication, any person may file his objections to the application.

History: En. Sec. 2194, C. Civ. Proc. Sec. 9926, R. C. M. 1921. Cal. C. Civ. Proc. 1895; re-en. Sec. 7327, Rev. C. 1907; re-en. Sec. 1231.

15-1113. (9927) Hearing of applications—directors as trustees of creditors and stockholders—copy of judgment to be filed with secretary of state. After the time of publication has expired, the court or judge may, upon five days' notice to the persons who have filed objections, or without further notice if no objections have been filed, proceed to hear and determine the application, and if all the statements made therein are shown to be true, must, by judgment, declare the corporation dissolved. The court or judge, in such action, shall ascertain the names of the directors of said corporation then in office, and shall incorporate such names in the judgment of dissolution, and the persons so named shall be the trustees of the creditors and stockholders or members of such dissolved corporation. If in any judgment of dissolution heretofore entered, the court declared who were the trustees, such declaration is conclusive evidence thereof. It shall be the duty of the clerk of such district court to immediately file with the secretary of state a copy of the judgment provided for in this section duly certified by such clerk.

History: En. Sec. 2195, C. Civ. Proc. 1895; re-en. Sec. 7328, Rev. C. 1907; amd. Sec. 2, Ch. 125, L. 1919; re-en. Sec. 9927, R. C. M. 1921; amd. Sec. 1, Ch. 55, L. 1925. Cal. C. Civ. Proc. Sec. 1232.

Collateral References

Power of equity to dissolve corporation on ground of intracorporate deadlock or dissension. 13 ALR 2d 1260.

15-1114. (9928) Judgment roll and appeals. The application, notices, proof of publication, objections (if there be any), and declaration of dissolution constitute the judgment roll; and from the judgment an appeal may be taken, as from other judgments of the district court.

History: En. Sec. 2196, C. Civ. Proc. 1895; re-en. Sec. 7329, Rev. C. 1907; re-en. Sec. 9928, R. C. M. 1921. Cal. C. Civ. Proc. Sec. 1233.

References

Cited or applied as section 7329, Revised Codes, in *Smith v. Iron Mountain Tunnel Co.*, 46 M 13, 17, 125 P 649.

15-1115. (9929) Voluntary dissolution of corporations. Any corporation organized under the laws of this state, which has ceased to transact business, and which has no assets, may be dissolved upon a compliance with the provisions of this act.

History: En. Sec. 1, Ch. 119, L. 1919; re-en. Sec. 9929, R. C. M. 1921.

References

Fitzpatrick v. Stevenson, 104 M 439, 443, 67 P 2d 310.

Collateral References

Corporations—610(2).

19 C.J.S. Corporations § 1685.

13 Am. Jur. 1159, Corporations, § 1288.

Power of corporation after expiration or forfeiture of its charter. 47 ALR 1288.

Dissolution of corporation which executed mortgage, or purchased property subject to it. 128 ALR 572.

15-1116. (9930) Directors shall file statement, where—contents of statement. A majority of the directors of such corporation, or, in the event some

of the directors are dead, a majority of those living, shall file in the office of the clerk of the district court of the county in which the principal office of such corporation is located, a statement, verified by their oaths, setting forth:

1. That said corporation has ceased to transact business;
2. That said corporation has no assets;
3. That said corporation has no intention of ever again resuming operations.

A copy of said statement, certified by the clerk of said district court, shall be filed in the office of the secretary of state.

History: En. Sec. 2, Ch. 119, L. 1919;
re-en. Sec. 9930, R. C. M. 1921.

References
Fitzpatrick v. Stevenson, 104 M 439,
445, 67 P 2d 310.

15-1117. (9931) Effect of filing statement. Upon the filing of such certified copy of such statement in the office of the secretary of state, such corporation shall thereupon become dissolved, and thereafter the directors shall be relieved from any further liability in connection with such corporation.

History: En. Sec. 3, Ch. 119, L. 1919;
re-en. Sec. 9931, R. C. M. 1921.

References
Fitzpatrick v. Stevenson, 104 M 439,
445, 67 P 2d 310.

15-1118. (9932) Same with reference to foreign corporations. Such a statement, filed with reference to a foreign corporation, whose principal property and operations were in Montana, shall also relieve the directors from any further liability under the laws of this state, as relating to said corporation.

History: En. Sec. 4, Ch. 119, L. 1919;
re-en. Sec. 9932, R. C. M. 1921.

Collateral References
Corporations \S 691.
20 C.J.S. Corporations $\S\S$ 1899-1902.

CHAPTER 12

SCOPE OF LAW—LEGISLATURE MAY REPEAL

- Section 15-1201. Scope of corporation laws.
15-1202. Chapter and section may be repealed.

15-1201. (6012) Scope of corporation laws. The provisions of sections 15-101 to 15-1202 of this code are applicable to every corporation, unless such corporation is excepted from its operation, or unless a special provision is made in relation thereto inconsistent with some provision in said sections, in which case the special provision prevails.

History: En. Sec. 563, Civ. C. 1895;
re-en. Sec. 3908, Rev. C. 1907; re-en. Sec.
6012, R. C. M. 1921. Cal. Civ. C. Sec. 403.

Codes, in State ex rel. Cascade Bank v. Yoder, 39 M 202, 207, 103 P 499; Uihlein v. Caplice Commercial Co., 39 M 327, 336, 102 P 564; Continental Supply Co. v. Abell et al., 95 M 148, 168, 24 P 2d 133.

Operation and Effect

This section furnishes no authority for the exercise of the right of eminent domain by a foreign corporation. Helena Power Transmission Co. v. Spratt, 35 M 108, 130, 88 P 773.

References

Cited or applied as section 3908, Revised

Collateral References
Corporations \S 13.
18 C.J.S. Corporations $\S\S$ 41, 45; 19
C.J.S. Corporations \S 933.

15-1202. (6013) Chapter and section may be repealed. The legislative assembly may at any time amend or repeal this part, or any chapter, or section thereof, and dissolve all corporations created thereunder; but such amendment or repeal does not, nor does the dissolution of any such corporation, take away or impair any remedy given against any such corporation, its stockholders or officers, for any liability which has been previously incurred.

History: En. Sec. 550, Civ. C. 1895; re-en. Sec. 3904, Rev. C. 1907; re-en. Sec. 6013, R. C. M. 1921. Cal. Civ. C. Sec. 384.

NOTE.—The word “part” as used above refers to a division of the 1921 code. Sections 15-101 to 15-1712 of this code were included.

Attachment Before Foreign Liquidator Has Taken Possession of Property

In action by liquidator of foreign corporation attacking attachment of corporation's property in Montana to satisfy Montana judgment which was secured after dissolution of corporation in New York, decisions of supreme court of Montana, construing local constitution and statutes, that local creditor of corporation may protect himself by attachment of corporation's property before foreign liquidator has taken possession of property, held binding on United States district court. *Van Schaick v. Parsons*, 11 F Supp 654, 657.

Decree of Dissolution Not Res Judicata On Claim for Personal Services Rendered Prior Thereto

Held, that court's decree, finding all allegations of the petition setting forth, inter alia, as required by section 15-1109, that all claims and demands against the corporation had been satisfied and discharged, were true, was not res judicata as to a claim thereafter made for personal services rendered prior to dissolution, in view of the provisions of this section, that the dissolution shall not take away or impair any remedy given against the corporation for any liability previously incurred. In *re Courtney Brothers, Inc.*, 110 M 289, 292, 100 P 2d 471.

Dissolution Leaves Right of Action Unimpaired

Under this section dissolution of a corporation does not take away or impair a remedy given against it; hence plaintiff in an action against the statutory trustees of a dissolved bank to fasten liability upon the bank for breach of contract, was not deprived of his right by the dissolution to institute the action for the purpose of reducing his claim to judgment, he taking his chances to realize thereon. *Fitzpatrick v. Stevenson*, 104 M 439, 445, 67 P 2d 310.

Operation and Effect

That the power to destroy plaintiff as a corporate entity was reserved and may be exercised by this state is beyond controversy. It would seem to be but a mere truism to say that the major power to destroy plaintiff's capacity to conduct business must, of necessity, include the minor power to exact an excise as a condition to its right to continue business. *Mid-Northern Oil Co. v. Walker et al.*, 65 M 414, 429, 211 P 353.

Held, that under this section declaring that dissolution of a domestic corporation does not take away or impair any remedy given against it for a liability previously incurred, and section 15-1709, providing that foreign corporations doing business in the state are subject to all the liabilities and restrictions imposed upon domestic corporations, and section 11, Article XV, Constitution, saying that no foreign corporation shall enjoy any greater rights or privileges in the state than those created under its laws, and action against an Iowa surety company pending in a state court did not abate upon its dissolution in Iowa, and that a judgment obtained after decree of dissolution was valid. *Mieyr v. Federal Surety Co. of Davenport*, 94 M 508, 519 et seq., 23 P 2d 959. Reversed, *Clark v. Williard*, 292 US 112, 78 L Ed 1160, 54 S Ct 615.

Held, that in view of section 43-510, relating to effect of amendment of statutes, and this section, providing that amendment or repeal of a Code section relating to corporations shall not impair or take away a remedy given against a corporation or its officers for a liability previously incurred, prior decisions holding that amendment of section 15-811, above, “to read as follows” and repealing “all Acts and parts of Acts in conflict herewith” worked the extinction of the amended section “as though it had never existed” in the absence of a saving clause, were erroneous and are overruled. *Continental Supply Co. v. Abell et al.*, 95 M 148, 165, 166, 24 P 2d 133.

This section saves the remedy against a domestic corporation for liabilities accrued before dissolution. *Montana Valley Land Co. v. Bestul*, 126 M 426, 253 P 2d 325, 327.

Voluntary Dissolution—Preference of Creditors

A bank going into voluntary liquidation may not prefer one creditor to another; and if its assets be distributed to others in preference to one who has a claim against it, he has a right of action; the complaint is not insufficient because it shows affirmatively that the corporation has no assets. *Fitzpatrick v. Stevenson*, 104 M 439, 446, 67 P 2d 310.

References

Cited or applied as section 550, Civil Code, in *Allen v. Ajax Mining Co.*, 30 M 490, 504, 77 P 47.

Collateral References

Corporations—39, 41, 617.
18 C.J.S. Corporations § 80; 19 C.J.S. Corporations §§ 1654, 1727.

CHAPTER 13

COLLEGES AND SEMINARIES, INCORPORATION OF

Section 15-1301. How incorporated.

15-1302. Articles of incorporation—contents.

15-1303. Board of trustees—term—quorum—powers.

15-1301. (6450) How incorporated. Any number of persons who desire to establish a college or seminary of learning may incorporate themselves as provided in this chapter.

History: Ap. p. Sec. 1, p. 44, L. 1883; re-en. Sec. 619, 5th Div. Comp. Stat. 1887; amd. Sec. 750, Civ. C. 1895; re-en. Sec. 4221, Rev. C. 1907; re-en. Sec. 6450, R. C. M. 1921. Cal. Civ. C. Sec. 649

Collateral References

Colleges and Universities—3.
14 C.J.S. Colleges and Universities § 4.
Generally, see 55 Am. Jur. 1, Universities and Colleges.

15-1302. (6451) Articles of incorporation—contents. In lieu of the requirements of section 15-108 of this code, the articles of incorporation must contain:

1. The name of the corporation;
2. The purposes for which it was organized;
3. The place where the college or seminary is to be conducted;
4. The number of its trustees, which shall not be less than three nor more than thirteen, and the names and residences of the trustees. The term for which the trustees named and their successors are to hold office may also be stated. If it is desired that the trustees or any portion of them shall belong to any organization, society, or church, such limitation shall be stated;

5. The names of those who have subscribed money or property to assist in founding the seminary or college, together with the amount of money and description of property subscribed.

History: Ap. p. Sec. 3, p. 44, L. 1883; 4222, Rev. C. 1907; re-en. Sec. 6451, re-en. Sec. 621, 5th Div. Comp. Stat. 1887; R. C. M. 1921. Cal. Civ. C. Sec. 649. amd. Sec. 751, Civ. C. 1895; re-en. Sec.

15-1303. (6452) Board of trustees — term — quorum — powers. Unless otherwise provided in the articles of incorporation, the board of trustees must, as soon as organized, so classify themselves that one-third of their number, as near as possible, must go out of office every year, and thereafter the trustees shall hold office for three years. A majority of the trustees constitute a quorum for the transaction of business, and the office of the corporation must be at the college or seminary.

The trustees have power:

1. To elect, by ballot, annually one of their number as president, and another as secretary; also any person as treasurer of the board;

2. Upon the death, removal out of the state, or other vacancy in the office, or expiration of the term of any trustee, to elect another in his place. If such corporation is formed under the patronage or authority of a church organization, the trustees may be elected by the presbytery, conference, convocation, or other ruling body of such church. If formed by a society, then by the members of the society;

3. To elect additional trustees; provided, the whole number elected must never exceed thirteen at any one time;

4. To declare vacant the seat of any trustee who absents himself from eight successive meetings of the board;

5. To receive and hold, by purchase, gift, devise, bequest, or grant, real estate or personal property for educational purposes connected with the corporation, or for the benefit of the institution;

6. To sell, mortgage, lease, contract, and otherwise use and dispose of the property of the corporation in such manner as they shall deem conducive to the prosperity of the corporation;

7. To direct and prescribe the course of study and discipline to be observed in the college or seminary;

8. To appoint a president of the college or seminary, who shall hold his office during the pleasure of the trustees;

9. To appoint such professors, tutors, and other officers as they shall deem necessary, who shall hold their offices during the pleasure of the trustees;

10. To grant such literary honors as are usually granted by any university, college, or seminary of learning in the United States, and in testimony thereof to give suitable diplomas under their seal, and signature of such officers of the corporation and the institution as they may deem expedient;

11. To fix salaries of the president, professors, and other officers and employees of the college or seminary;

12. To make all by-laws and ordinances necessary and proper to carry into effect the preceding powers and necessary to advance the interests of the college or seminary; provided, that no by-law or ordinance shall conflict with the constitution or laws of the United States, or of this state.

History: En. Sec. 752, Civ. C. 1895;
re-en. Sec. 4223, Rev. C. 1907; re-en. Sec.
6452, R. C. M. 1921. Cal. Civ. C. Sec. 650.

Collateral References

Colleges and Universities 7.
14 C.J.S. Colleges and Universities § 18.

CHAPTER 14

RELIGIOUS, SOCIAL AND BENEVOLENT CORPORATIONS

- Section 15-1401. Incorporation of churches, charities, benevolent, fraternal, nonprofit societies and like associations.
15-1402. Articles of incorporation of nonprofit corporations—contents—execution and filing.
15-1403. Powers of corporation.
15-1404. By-laws, matters which may be embraced in.
15-1405. Incorporation of church or religious societies.

- 15-1406. Power to mortgage or sell property.
- 15-1407. Religious organizations—incorporation, power and management of diocesan corporation.
- 15-1408. Formation and powers of parish or local religious corporations.
- 15-1409. Repeal or modification of existing laws.

15-1401. (6453) Incorporation of churches, charities, benevolent, fraternal, nonprofit societies and like associations. (a) Incorporations by persons. A nonprofit corporation may be formed by any number of persons, not less than three for any lawful purposes such as religious, charitable, social, educational, recreational, scientific, or for the purpose of defraying or assuming the cost of professional services, including services rendered by doctors of medicine, or other professional licentiates recognized by the laws of the state of Montana, and/or services rendered by hospitals, or health centers, clinics or sanatoria, or acting as agent, representative or factor of such licentiates or hospitals, or for establishing and conducting benevolent associations or beneficial associations, agricultural, horticultural or viticultural or stockgrowers societies, stockgrowers associations, taxpayers organizations, and organizations promoting social welfare, or for the purpose of establishing and conducting libraries, museums, public or private charities, and all other associations of like character, including local, independent and subordinate organizations, and state supervisory, governing and grand organizations and bodies of any such societies, associations and organizations, provided that in all such cases, such incorporation or incorporated association, company, society or organization does not contemplate the distribution of pecuniary gains, profits or dividends to the members thereof, and that pecuniary profit is not the object, or any object of such incorporation hereunder. The carrying on of business by any nonprofit corporation upon a basis which may earn legitimate operating and administrative expenses, discharge the obligations of any said corporation contracted within the scope of its powers hereunder, and the distribution of its assets to beneficial members in the event of dissolution of the corporation shall not be deemed forbidden to such nonprofit corporations.

(b) Incorporation of existing unincorporated associations and organizations. A nonprofit corporation may be organized under this chapter for the purpose of incorporating an existing or hereafter organized unincorporated association, lodge, fraternal body, club, society, group or organization. As used herein the term unincorporated association shall signify and include: society, library, school, college, club, church, congregation, or denominational group, trustees of a charitable trust, chamber of commerce, lodges of Ancient Free and Accepted Masons, Independent Order of Odd Fellows, Knights of Columbus, Benevolent and Protective Order of Elks, Fraternal Order of Eagles, Loyal Order of Moose, groups of patrons of husbandry, posts of the American Legion, Veterans of Foreign Wars, Disabled American Veterans, foundations, federations, beneficial or benevolent societies, professional societies, literary societies, organizations lawfully advocating social, economic and moral reforms and public welfare programs, organizations described in (a) above, or any other lawful unincorporated organizations or associations provided that in all such cases such incorporation, or incorporated association, lodge, company, society or corporation does not contemplate the distribution of pecuniary gains, profits or dividends to the

members thereof, and that pecuniary profit is not the object, or any object of such incorporation hereunder, subject to the provisions of (a) above. The fact that the grand, head or national body is unincorporated shall not prevent the incorporation of the subordinate body, but no subordinate body shall be incorporated unless such action is approved in writing by the grand, head or national body in accordance with its applicable rules and regulations, and such approval, or certified copy thereof is attached to the articles of incorporation submitted to the secretary of state. The seal of the subordinate body shall be its corporate seal.

(c) Churches, religious denominations and religious societies may incorporate hereunder, or at their election under sections 15-1405 to 15-1409.

(d) Health service corporations. All health service corporations formed under this chapter for the purposes of defraying or assuming the cost of professional services of licentiates in the field of health, or the services of hospitals, clinics or sanatoria, or both professional and hospital services, or acting as agent, factor or representative of, or contracting on behalf of organizations of such licentiates, or group, groups, or organizations of hospitals, or both licentiate and hospital organizations, in the matter of prepaid service plans in the field of health, may not engage, directly or indirectly, in the performance of the corporate purposes or objects unless (1) at least one-fourth of all licentiates of the particular profession, or, in the case of hospital service corporations, at least one-fourth of the whole number of hospitals in the state become members; (2) membership in the corporation and an opportunity to render professional services upon a uniform basis is available to all licensed members of the particular profession where professional licentiates are involved, and membership in the corporation and an opportunity to render hospital services upon a uniform basis is available to all hospitals approved by or licensed by the state board of health where hospitals are involved; (3) a certificate has been issued to the corporation by the particular professional board whose licentiates have become members, or, in the case of hospitals by the licensing agency of such hospitals, finding compliance with the foregoing requirements. All health service corporations organized hereunder shall be subject to supervision by the particular professional board or hospital board or agency under which members or hospitals are licensed; and they shall at all times be subject to examination by the attorney general on behalf of the state, to ascertain the condition of affairs of any such corporation, and to what extent, if at all, any such corporation may fail to comply with trusts which it has assumed or may depart from the general purposes for which it is formed, and in case of any such failure or departure the attorney general shall institute, in the name of the state, the proceedings necessary to correct the same; and all such medical, hospital or health service corporations heretofore organized and existing under the nonprofit corporation laws of Montana shall be subject to the provisions hereof. Such health service corporations are hereby prohibited from practicing any of the healing arts and, also, from operating or conducting hospitals or hospital services.

History: Early acts regulating corporations of this class were Secs. 1-7, pp. 49-51, L. 1879; ap. Secs. 292-298, 5th Div. Rev. Stat. 1879; re-en. Secs. 670-676, 5th Div. Comp. Stat. 1887; amd. as Secs. 860-865, Civ. C. 1895.

This section en. by Ch. 70, L. 1903; re-en. Sec. 4224, Rev. C. 1907; re-en. Sec. 6453, R. C. M. 1921; amd. Sec. 1, Ch. 112, L. 1923; amd. Sec. 1, Ch. 88, L. 1937; amd. Sec. 1, Ch. 283, L. 1947. Cal. Civ. C. Sec. 593.

Cross-Reference

Hospitals to be licensed, sec. 69-2901 et seq.

Abatement of Activities for Violation of Gambling Laws

A bona fide corporation organized under this chapter (secs. 15-1401 to 15-1409) may legally permit gambling among its members, but may not permit any person or persons other than its members to participate in such gambling. Where attorney general sought to abate corporation's activities on ground it permitted non-

members to gamble at will, propriety of such action was upheld against contention that proceeding in quo warranto was the proper remedy. *State ex rel. Bottomly v. District Court et al.*, 115 M 400, 403, 143 P 2d 559.

Collateral References

Beneficial Associations 3; Charities 39; Religious Societies 4.

10 C.J.S. Beneficial Associations § 8; 14 C.J.S. Charities § 68; 76 C.J.S. Religious Societies § 4.

Generally, see 10 Am. Jur. 683, Charity, §§ 134 et seq.; 38 Am. Jur. 435, Mutual Benefit Societies; 45 Am. Jur. 719, Religious Societies.

Nonprofit purposes and character which warrant creation of nonprofit corporation. 16 ALR 2d 1345.

15-1402. (6454) Articles of incorporation of nonprofit corporations—contents—execution and filing. (a) The articles of incorporation shall state:

1. The name of the corporation.
2. The purposes for which it is formed and that it is a corporation which does not contemplate pecuniary gain or profit to the members thereof.
3. The complete mailing address including the city or town and the county in this state where the principal office for the transaction of the business of the corporation is to be located.
4. The names and addresses of three or more persons who are to act in the capacity of directors until the selection of their successors and who may be given such title as may be deemed appropriate, but who shall be subject to all laws of this state relating to directors except as otherwise in this title provided. The number of persons so named shall constitute the number of directors of the corporation, until changed by an amendment to the articles or by a by-law adopted pursuant to authority contained in the articles.
5. The authorized number and qualifications of its members, including natural persons, corporations, and associations, the different classes of membership, if any, the property, voting and other rights and privileges of each class of membership, and the liability of each or all classes to dues or assessments and the method of collection thereof, may be set forth either in the articles or in the by-laws.
6. The name of the existing unincorporated association, if any, which is being incorporated.
7. If desired, any lawful provision for the regulation of the affairs of such corporation, including restrictions upon the power to amend all or any part of the articles of incorporation.

(b) Incorporation by individuals. The persons who are to act in the capacity of first directors must subscribe the articles of incorporation, and the signatures of any other persons desiring to associate with said persons for the purpose of forming such corporation may also be subscribed thereto, and such execution shall be acknowledged before an officer designated by

the laws of this state as one before whom an acknowledgment may be made. Any other signatures to the articles must be acknowledged in the same manner. Any certificate of acknowledgment taken without the state must be authenticated by the certificate of an officer having the requisite official knowledge of the qualification of the officer before whom the acknowledgment was made.

(c) Unincorporated associations. In the case of the incorporation of an unincorporated association which has a presiding officer, president or other head, and a secretary or an acting secretary, clerk, scribe or other similar officer, the articles of incorporation need be subscribed and acknowledged only by such officers, and there shall be attached thereto, (a) an affidavit by said officers that such association has duly authorized its incorporation, and that the officers have executed the articles by authority of such association, and (b) a certified copy of the resolution of the membership of the association authorizing incorporation.

(d) Submission of articles. The articles shall be submitted to the secretary of state for filing in his office and if they conform to law he shall file the same and place thereon an indorsement of the date of filing and issue a certificate of incorporation.

(e) Name. The secretary of state shall not file articles of incorporation which set forth a name which is likely to mislead the public or which is the same as or resembles so closely as to tend to deceive.

(1) The name of a domestic corporation, or

(2) The name of a foreign corporation which is authorized to transact business in this state, or

(3) A name which is under reservation with the secretary of state for another corporation.

The use by a corporation of a name in violation of this section may be enjoined, notwithstanding that its articles may have been filed by the secretary of state.

(f) Filing of copy of articles. A copy of the articles certified by the secretary of state and bearing the endorsement of the date of filing in his office, shall be filed in the office of the county clerk of the county in which the corporation is to have its principal office.

(g) Effect of filing. When filed, the articles or certified copies thereof shall have the same force and effect in evidence as to the properly certified articles of a stock corporation.

History: Earlier acts regulating corporations of this class were Secs. 1-7, pp. 49-51, L. 1879; ap. Secs. 292-298, 5th Div. Rev. Stat. 1879; re-en. Secs. 670-676, 5th Div. Comp. Stat. 1887; amd. as Secs. 860-865, Civ. C. 1895.

This section en. by Ch. 70, L. 1903; re-en. Sec. 4225, Rev. C. 1907; amd. Sec. 1, Ch. 101, L. 1909; re-en. Sec. 6454, R. C. M. 1921; amd. Sec. 2, Ch. 112, L. 1923; amd. Sec. 2, Ch. 283, L. 1947.

Cross-Reference

Change of name, sec. 93-100-2.

Operation and Effect

Held that a religious society, organized and having its domicile in the state of Minnesota may, under the laws of that state, similar to those of Montana as set out in this section and the one following, take a bequest made to it by a resident testator, capable of making the will. In re Hauge's Estate, 92 M 36, 42, 9 P 2d 1065.

15-1403. (6455) Powers of corporation. Upon the filing of the articles by the secretary of state the corporation shall be created and shall continue

to exist perpetually, unless otherwise provided by law, and shall possess the following powers:

1. To sue and be sued;
2. To contract and be contracted with;
3. To receive property by devise or bequest, subject to the laws regulating the transfer of property by will, and to otherwise acquire and hold all property, real or personal, including shares of stock, bonds and securities of other corporations;
4. To act as trustee under any trust incidental to the principal objects of the corporation, and to receive, hold, administer, and expend funds and property subject to such trust;
5. To convey, exchange, lease, mortgage, encumber, transfer upon trust or otherwise dispose of all property, real or personal;
6. To borrow money, contract debts, and issue bonds, notes and debentures, and secure the same;
7. To do all other acts necessary or expedient for the administration of the affairs and attainment of the purposes of the corporation;
8. To have and use a corporate seal.

History: Earlier acts regulating corporations of this class were Secs. 1-7, pp. 49-51, L. 1879; ap. Secs. 292-298, 5th Div. Rev. Stat. 1879; re-en. Secs. 670-676, 5th Div. Comp. Stat. 1887; amd. as Secs. 860-865, Civ. C. 1895.

This section en. by Ch. 70, L. 1903; re-en. Sec. 4226, Rev. C. 1907; amd. Sec. 1, Ch. 101, L. 1909; re-en. Sec. 6455, E. C. M. 1921; amd. Sec. 3, Ch. 112, L. 1923; amd. Sec. 3, Ch. 283, L. 1947.

Collateral References

Beneficial Associations—5, 14-19 et seq.; Charities—39 et seq.; Religious Societies—4-10, 15-25 et seq.

10 C.J.S. Beneficial Associations §§ 25 et seq., 30 et seq., 36 et seq.; 14 C.J.S. Charities § 68; 76 C.J.S. Religious Societies §§ 4, 11 et seq., 23 et seq., 31, 50.

15-1404. (6456) By-laws, matters which may be embraced in. Corporations organized for purposes other than profit may, in their by-laws, ordinances, constitutions, or articles of incorporation, in addition to the provisions in the preceding section, provide for:

1. The qualification of members, mode of election, and terms of admission to membership; the qualification of directors or trustees, rights of representation on the board as directors or trustees, the mode of election, including the election of directors or trustees by vote of contributors to the corporation in proportion to their total contributions;

2. The fees of admission and dues to be paid into their treasury by members;

3. The number of members that constitutes a quorum at any meeting of the corporation, and an election of officers of the corporation by a meeting so constituted shall be as valid as if there had been a majority of the members present thereat and voting;

4. The expulsion and suspension of members for misconduct or non-payment of dues; also for restoration to membership;

5. Contracting, securing, paying, and limiting the amount of their indebtedness;

6. Other regulations, not repugnant to the constitution or laws of the state and consonant with the objects of the corporation.

History: Earlier acts regulating corporations of this class were Secs. 1-7, pp.

49-51, L. 1879; ap. Secs. 292-298, 5th Div. Rev. Stat. 1879; re-en. Secs. 670-676, 5th

Div. Comp. Stat. 1887; amd. as Secs. 860-865, Civ. C. 1895.

This section en. by Ch. 70, L. 1903; re-en. Sec. 4227, Rev. C. 1907; re-en. Sec. 6456, R. C. M. 1921; amd. Sec. 1, Ch. 137, L. 1947.

Collateral References

Beneficial Associations 5; Charities 39; Corporations 55.
10 C.J.S. Beneficial Associations § 25 et seq.; 14 C.J.S. Charities § 68; 18 C.J.S. Corporations § 186.

15-1405. (6457) Incorporation of church or religious societies. The representative body of any church or religious society in this state, such as conference, synod, convocation, convention, or the like, may elect not less than three of its members of such church or religious society as trustees, with authority to form a corporation for holding and administering all trust funds for general or special purposes, or for holding the legal title to real estate for use and in trust for the said church or society, or any congregation or parish thereof, and for conducting and transacting the business affairs of such church or religious society, or any congregation or parish thereof; and any church or religious society may authorize the formation of as many corporations of this character as may be deemed necessary and proper for this purpose. Such persons so appointed as trustees must thereupon make, execute, acknowledge, and file articles of incorporation in the office of the county clerk and recorder of the county wherein such business is to be transacted, and a certified copy thereof in the office of the secretary of the state of Montana. Such articles may contain the statements set forth in section 15-1403. There must be attached to the articles of incorporation a transcript of the record of their election as such trustees, certified to by the presiding and recording officer of the body by which they are elected, and thereupon such persons and their successors in office shall become a body politic and corporate, and shall have and exercise the powers set forth in the two preceding sections, and such corporation may, also, in its by-laws or articles of incorporation, provide for the number, name, or designation of its officers, their qualifications, duties, terms of office, and manner and time of election or appointment.

History: Earlier acts regulating corporations of this class were Secs. 1-7, pp. 49-51, L. 1879; ap. Secs. 292-298, 5th Div. Rev. Stat. 1879; re-en. Secs. 670-676, 5th Div. Comp. Stat. 1887; amd. as Secs. 860-865, Civ. C. 1895.

This section en. by Ch. 70, L. 1903; re-en. Sec. 4228, Rev. C. 1907; re-en. Sec. 6457, R. C. M. 1921.

Collateral References

Religious Societies 4, 9, 65.
76 C.J.S. Religious Societies §§ 3 et seq., 23 et seq.
See generally, 45 Am. Jur. 719, Religious Societies.

15-1406. (6458) Power to mortgage or sell property. Corporations of this character mentioned in this chapter, heretofore organized or that may be hereafter organized, may mortgage or sell real and personal property held by them in such way and through such officers as may be authorized by their constitutions, by-laws, or resolutions.

History: Earlier acts regulating corporations of this class were Secs. 1-7, pp. 49-51, L. 1879; ap. Secs. 292-298, 5th Div. Rev. Stat. 1879; re-en. Secs. 670-676, 5th Div. Comp. Stat. 1887; amd. as Secs. 860-865, Civ. C. 1895.

This section en. by Ch. 70, L. 1903; re-en. Sec. 4229, Rev. C. 1907; re-en. Sec. 6458, R. C. M. 1921.

Authority to Sell

Where there is no constitution or by-laws of the religious corporation the trustees cannot sell the church building without a resolution adopted by the members authorizing them to do so. Smith v. St. John Baptist Church, 123 M 264, 211 P 2d 975, 977.

Collateral References

Beneficial Associations 17; Charities 10 C.J.S. Beneficial Associations § 32; 14 C.J.S. Charities § 72; 19 C.J.S. Corporations §§ 1098, 1171, 1214, 1240; 76 C.J.S. Religious Societies § 62.
 40; Corporations 442, 458, 476(1);
 Religious Societies 19, 20.

15-1407. (6459) Religious organizations — incorporation, power and management of diocesan corporation. Religious corporations partaking, holding, receiving, and disposing of any real or personal property for the use and benefit of any diocese now or hereafter existing of any religious denomination in the state, and for administering the temporalities thereof, and for the further purposes, and with the powers hereinafter specified, may be created in the manner and with the powers, privileges, and franchises herein stated, to-wit:

(1) The bishop of any diocese in which any such corporation is to be located may associate with himself the vicar-general and chancellor of such diocese, if such dignitaries or officers there be in his denomination, and if not, then such dignitaries or officers as may be next in order to him, according to the rules or organization of his denomination, and two in number, and in any such case these three, or a majority of them, may designate and associate with themselves, or may cause to be selected, in accordance with the rules of any such denominations to which they may belong, two other members of the same religious denomination, and residents of such diocese, and upon adopting, signing, and acknowledging, in duplicate, a certificate, or articles of incorporation, reciting the facts of the association, and of the selection and designation of such two additional persons, and containing the same general purpose, and place of location of such corporation, and filing of one of said duplicates in the office of the county clerk and recorder of the county in which the place of location of such corporation is to be situated, and the other in the office of the secretary of state of this state; the said five persons and their successors in office shall become a corporation, with power to take, hold, receive, and dispose of any real or personal property, or both, for the use and benefit of such diocese, and for the use and benefit of the religious denomination therein, constituting such diocese, and to administer the temporalities of such diocese, and to establish and conduct schools, seminaries, colleges, and any benevolent, charitable, religious, or missionary work, or society or such religious denominations within such diocese, with all the powers and privileges of religious corporations, and shall be capable of suing and being sued, holding, purchasing, and receiving title by devise, gift, grant, or otherwise, of and to any property, real or personal, and shall have power to mortgage, sell, and convey the same, or any part thereof, and may adopt and establish by-laws, and make all rules and regulations deemed by them necessary or expedient for the management of its affairs in accordance with law.

(2) The persons who may hold the office respectively of bishop, vicar-general, and chancellor in such denomination, within and for such diocese, and their successors in office, or the two persons who may hold offices next in rank to that of bishop in any denomination, not having offices or dignitaries designated by name as vicar-general or chancellor, shall, by virtue of their respective offices, always be members of such corporation, but on ceasing to

hold such office, the corporate membership of each shall at once cease; the term of office of such two persons selected and designated as aforesaid, in addition to the bishop, and two other officers or dignitaries, shall be two years from the time of their appointment, and until their respective successors are chosen, and have accepted such office.

(3) The successors, respectively, of such two persons so selected by the said bishop, vicar-general, and chancellor, and so signing such articles of incorporation, or corporators, shall, unless otherwise provided in the articles of incorporation, always be chosen by the said other three corporators, namely, the bishop, vicar-general, and chancellor, or by any two of them in the case of any denomination having dignitaries designated by these names, and wherever a vacancy shall occur in such membership as to any such corporator so selected, and as often as any such vacancy shall, for any cause, occur, whether by expiration of term, by resignation, death, or otherwise, the aforesaid three official corporators shall have power to fill such vacancy; provided, however, that in any denomination having a bishop, but not having a vicar-general or chancellor, by such name designated, then these powers shall be exercised by the bishop, and the other official corporators, or any two of them. Every such appointment shall be in writing and entered of record in the minutes of the corporation, and such appointees shall be members of such religious denomination, and residents of the diocese in which the corporation is located. Any corporator so selected may at any time resign, and thereby cease to be a member of such corporation. Such resignation and its acceptance shall be entered on the minutes of said corporation.

(4) In case of vacancy in the office of bishop, or of a temporary suspension of his powers to act, the administrator of the diocese, or such other person as may be appointed, according to the rules of the particular denomination, to preside over and administer the spiritual and temporal affairs of the diocese during such vacancy, or suspension of powers of the bishop, and while he is such administrator or appointee shall be a member of said corporation with all the powers of such corporator that are by this act vested in such bishop, and may act in his place and stead, but his membership shall at once cease whenever such vacancy in the office of bishop shall be filled, or such bishop shall be no longer incapacitated to act by reason of such suspension of his authority. Any member of such corporation may, by writing signed by him, appoint a proxy to represent and act for him, and in his name and stead to vote at any meeting of such corporation.

History: En. Sec. 1, Ch. 87, L. 1913;
re-en. Sec. 6459, R. C. M. 1921.

76 C.J.S. Religious Societies § 2.
See generally, 45 Am. Jur. 719, Religious Societies.

Collateral References

Religious Societies⇒1.

15-1408. (6460) Formation and powers of parish or local religious corporations. (1) Whenever, and as often as it may be deemed advisable, or desired by the bishop of any religious denomination within the state of Montana, to have created or organized any parish or local religious corporation within the state for the purpose, and with the powers hereinafter specified, he may associate with himself the vicar-general of the same diocese, if there be such a dignitary or officer in such denomination, or if not,

then the dignitary or officer next in rank to the bishop in said diocese, and the pastor or rector or dignitary performing the function of a pastor or rector in the particular denomination, and of the parish or local congregation wherein any such corporation is to be located, and which shall be within the diocese of such bishop, and the said bishop, vicar-general, and pastor or rector shall select, designate, and associate with themselves two lay members of such denomination within the parish, or other subdivision, under the care of such pastor or rector, and the said five persons upon adopting, and signing, and acknowledging in duplicate, a certificate or articles of incorporation, reciting the fact of the association, and of the selection of such laymen as aforesaid, and containing the name, general purpose, and place of location of such corporation, and having one of said certificates, or articles, recorded in the office of the county clerk and recorder of the county in which such parish or congregation is located, and the other in the office of the secretary of state of this state, and said five persons shall become a corporation, and be invested with all the rights, powers, and privileges of a religious corporation, and they, and their successors in office, in such corporation, to-wit, the said corporation, shall be capable of suing and being sued, holding, purchasing, and receiving title by devise, gift, grant, or otherwise, of and to any property, real or personal, or both, and shall have power to mortgage, sell, or convey the same, or any part thereof, subject always to the rules of the denomination to which such corporators may belong, and may adopt and establish by-laws, and make all rules and regulations necessary or expedient for the management of its affairs.

(2) The persons at any time holding the offices hereinbefore specified in the denomination, and in the diocese in which such corporation is located, together with the pastor or rector, or other person in charge of such denomination in the parish, or congregation, where such corporation is located, and the successor in office of each one of said officers with such diocese, parish, or congregation shall, by virtue of his respective office, be a member of and with the two laymen selected and appointed, as aforesaid, shall constitute such corporation. But no person shall have authority to subscribe such articles as bishop, vicar-general, pastor, or rector, or other official capacity, unless such person is at the time in the occupancy of the particular office, and recognized as such by the proper authority of his denomination, and every such person, on ceasing to hold such office in his denomination, shall thereupon cease to be a member of the corporation, and his successor in office shall become entitled to his place in such corporation. The two laymen, or their successors, shall constitute the other members of said corporation.

(3) The term of office of each of the two laymen hereinbefore mentioned, and to be designated as aforesaid, shall be two years from the date of the certificate or articles, and thereafter the term of each of the lay members shall be two years from the corresponding date in subsequent years, and until his successor shall have been appointed, and shall have accepted the office. The laymen thus to serve as corporators, or members of such corporation, shall, unless otherwise provided in the articles of incorporation, always be chosen by said other three corporators, to-wit, by the said

official corporators, or any two of them, and the said last-named corporators, or any two of them, shall have power at all times, whenever a vacancy shall occur in the membership as to either of said lay corporators, and as often as any such vacancy may for any cause occur, have power to fill such vacancy. Every such appointment shall be in writing and entered of record in the minutes of the corporation. Any lay corporator may resign his office as corporator, and thereby cease to be a member of such corporation. His resignation shall always be entered on the minutes of said corporation.

(4) Should there be, at any time, a vacancy in the office of the bishop belonging to any such corporation, or if there be at any time a person other than the bishop appointed in his stead to administer the spiritual and temporal affairs of said diocese, then during the time of such vacancy or such suspension of the authority of the bishop, the administrator of the diocese of the said bishop, or such other person as may be appointed according to the rules of his denomination to preside over and administer the spiritual and temporal affairs of such diocese, shall, while he is such administrator or appointee, be a member of such corporation, with all the powers of such corporator, that are by this act vested in such bishop, and may act in his place and stead in such corporation, but his membership shall at once cease whenever such vacancy in the office of bishop shall be filled, or such suspension of authority or incapacity to act shall be removed, or shall cease.

(5) If any diocese now existing, or hereafter created within any such corporation belonging to such denomination, shall be at any time subdivided according to the rules and practices of such denomination, and one or more new dioceses be formed therefrom, or from parts thereof, the bishop and vicar-general, or the dignitary next in rank to the bishop of such new diocese, and their successors in office, shall also appoint and institute, and by virtue of their respective offices forthwith become members of any such corporation within such new diocese, with all the rights, duties, privileges, powers, and obligations of such members. And the bishop and vicar-general, or dignitary next in rank to the bishop of the diocese in which such corporation or corporations may be or were located, prior to such subdivision, shall henceforth cease to be members of such corporation, and all of the provisions of this section shall apply and continue to apply to any such new diocese, and to any such corporation or corporations therein located, with the same force and effect as in the old diocese.

History: En. Sec. 2, Ch. 87, L. 1913;
re-en. Sec. 6460, R. C. M. 1921.

76 C.J.S. Religious Societies §§ 35, 85.
See generally, 45 Am. Jur. 719, Religious Societies.

Collateral References

Religious Societies—11, 12.

15-1409. (6461) Repeal or modification of existing laws. Nothing herein contained shall be construed as repealing or modifying any existing provision of law regarding religious corporations, and the provisions of this act shall be deemed additional and alternative provisions.

History: En. Sec. 3, Ch. 87, L. 1913;
re-en. Sec. 6461, R. C. M. 1921.

Collateral References

Religious Societies—3.
76 C.J.S. Religious Societies § 4.

CHAPTER 15

RELIGIOUS CORPORATIONS SOLE

- Section 15-1501. When corporations sole may be created.
 15-1502. Articles of incorporation.
 15-1503. Certificate of incorporation.
 15-1504. Powers of corporation sole.
 15-1505. Succession.
 15-1506. Amendment of articles.
 15-1507. Certificate of amended articles.

15-1501. (6462) When corporations sole may be created. Whenever the rules, regulations, or discipline of any religious denomination, society, or church permit or require the estate, property, temporalities, and business thereof to be held in the name of, or managed by a bishop, chief priest, or presiding elder, it shall be lawful for such bishop, chief priest, or presiding elder of such religious denomination, society, or church to become a sole corporation in the manner herein prescribed.

History: En. Sec. 1, p. 105, L. 1899;
 re-en. Sec. 4230, Rev. C. 1907; re-en. Sec.
 6462, R. C. M. 1921. Cal. Civ. C. Sec.
 602.

Collateral References
 Religious Societies \Rightarrow 4.
 76 C.J.S. Religious Societies § 4 et seq.
 See generally, 45 Am. Jur. 719, Religious
 Societies.

15-1502. (6463) Articles of incorporation. Such bishop, chief priest, or presiding elder shall file in the office of the secretary of state articles of incorporation, which articles shall set forth the name of such religious denomination, society, or church, and the name of such sole corporations, and designate the territory over which he presides, or over which his jurisdiction extends, and the facts authorizing such incorporation, and declare the manner in which any vacancy occurring in the incumbency of such bishop, chief priest, or presiding elder, as required by the rules, regulations, or discipline of such religious denomination, society, or church, shall be filed, which statement shall be verified by affidavit; and he shall also file proof of his appointment or election as such bishop, chief priest, or presiding elder, and for proof of the appointment or election of such bishop, chief priest, or presiding elder, or of any succeeding incumbent of such corporation, it shall be sufficient to record in the office of the secretary of state the original, or a copy of his commission, or certificate, or letters of election, or appointment, duly attested.

History: En. Sec. 2, p. 106, L. 1899;
 re-en. Sec. 4231, Rev. C. 1907; re-en. Sec.
 6463, R. C. M. 1921. Cal. Civ. C. Sec. 602. §§ 5-10.

Collateral References
 Religious Societies \Rightarrow 5.

15-1503. (6464) Certificate of incorporation. Upon filing the articles of incorporation in the office of the secretary of state, with the proof of the appointment or election of such bishop, chief priest, or presiding elder, the secretary must issue to the corporation, over the great seal of the state, a certificate that the articles of incorporation, containing the required statement of facts, and the proof of the appointment or election of such bishop, chief priest, or presiding elder, has been filed in his office, and thereupon

such bishop, chief priest, or presiding elder shall become, and he and his successors in office shall be a sole corporation.

History: En. Sec. 3, p. 106, L. 1899;
re-en. Sec. 4232, Rev. C. 1907; re-en. Sec.
6464, R. C. M. 1921.

15-1504. (6465) Powers of corporation sole. Every sole corporation, organized under the provisions of this act, for the purpose of the trust hereinafter mentioned, shall have power to contract in the same manner, and to the same extent, as a natural person, and may sue and be sued, and may defend in all courts, in all matters and proceedings whatever, and shall have authority to borrow money, and to give promissory notes therefor, and to secure the payment thereof by mortgage or other lien upon property, real or personal; to buy, sell, lease, and in every way deal in real or personal property, in the same manner that a natural person may, for the use, purpose, benefit, and behoof of such religious denomination, society, or church, and without the order of any court; and to receive bequests and devises for its own use, or upon trust, and to the same extent that a natural person may, and to appoint attorneys in fact, and to adopt and use a corporate seal; provided, however, that all property held by or in the name of such sole corporation shall be in trust for the use, purpose, benefit, and behoof of such religious denomination, society, or church, for which and in whose behalf such sole corporation is organized.

History: En. Sec. 4, p. 106, L. 1899; 76 C.J.S. Religious Societies §§ 36, 52,
re-en. Sec. 4233, Rev. C. 1907; re-en. Sec. 56, 62, 64, 71, 85, 102-104.
6465, R. C. M. 1921. Cal. Civ. C. Sec. 602. 45 Am. Jur. 782, Religious Societies,
§§ 72-74.

Collateral References

Religious Societies 10-25.

15-1505. (6466) Succession. In the event of the death or resignation from office of any such bishop, chief priest, or presiding elder, or of his removal therefrom by the person or body having the authority to remove him, his successor in office shall be vested with the title to the property, with like power and authority over the same, and subject to all the legal liabilities and obligations with reference thereto. Such successor shall file in the office of the county clerk and recorder of each county wherein any of said property is situated a certified copy of the proof of his appointment or election, required by section 15-1502 to be filed with the secretary of state, accompanied by an instrument in writing containing a description of the property situated in such county, and a declaration that the same is owned and held by him by virtue of his succession to said office, which declaration shall be signed and acknowledged by him before some officer authorized to take acknowledgments. Said certificate and statement shall constitute a muniment of title to said property, and the same, or a copy thereof duly certified by the clerk and recorder of the county wherein the same is filed, shall be competent evidence thereof in any action or proceeding concerning the same.

History: En. Sec. 5, p. 107, L. 1899;
re-en. Sec. 4234, Rev. C. 1907; re-en. Sec.
6466, R. C. M. 1921.

Collateral References

Religious Societies 9.
76 C.J.S. Religious Societies § 23.

15-1506. (6467) Amendment of articles. Whenever any bishop, chief priest, or presiding elder shall have filed in the office of the secretary of state articles of incorporation, under the provisions of an act entitled, "An act authorizing and regulating the incorporation of sole corporations, and defining their powers," approved February 27, 1899, and there shall be any change made in the boundaries of the territory over which he, or his successor, presides, or over which his or his successor's jurisdiction extends, or whenever, for other reasons, it is deemed necessary, such bishop, chief priest, or presiding elder, or his successor in office, may file in the office of the secretary of state amended articles of incorporation, which articles shall set forth the date of filing the original articles of incorporation, the name of such religious denomination, society, or church, and the name of such sole corporation, and designate the territory over which he presides, or over which his jurisdiction extends, and the facts authorizing such incorporation, and declare the manner in which any vacancy, occurring in the incumbency of such bishop, chief priest, or presiding elder, as required by the rules and regulations or discipline of such religious denomination, society, or church, shall be filled, and shall also file the original, or a copy or translation of his commission, certificate, or letters of appointment as such bishop, chief priest, or presiding elder, duly attested, and his affidavit that the same is a true copy or translation shall be deemed a sufficient attestation thereof.

History: En. Sec. 1, Ch. 65, L. 1905;
re-en. Sec. 4235, Rev. C. 1907; re-en. Sec.
6467, R. C. M. 1921.

Collateral References
Religious Societies 5.
76 C.J.S. Religious Societies § 3.

15-1507. (6468) Certificate of amended articles. Upon filing the amended articles of incorporation in the office of the secretary of state, with the certificate or copy of appointment, mentioned in the preceding section, the secretary shall issue to such corporation, over the great seal of the state, an amended certificate of incorporation, setting forth therein the date of filing the original articles, and the date of filing the amended articles of incorporation, and that said amended articles of incorporation, containing the required statement of facts, and proof of the appointment or election of such bishop, chief priest, or presiding elder, as provided in the preceding section, have been filed in his office. And the said bishop, chief priest, or presiding elder shall continue to be, and be, and his successor in office shall be a sole corporation, under the original articles and amended articles of incorporation filed.

History: En. Sec. 2, Ch. 65, L. 1905;
re-en. Sec. 4236, Rev. C. 1907; re-en. Sec.
6468, R. C. M. 1921.

CHAPTER 16

MINING CORPORATIONS—TRANSFER AGENCIES

- Section 15-1601. Transfer agencies.
15-1602. Stock issued at transfer agencies.
15-1603. Consolidation or merger of mining corporations.

15-1601. (6648) Transfer agencies. Any corporation organized in this state for the purpose of mining or carrying on mining operations in or with-

out this state, may establish and maintain agencies in other states of the United States for the transfer and issuing of its stock; and a transfer or issue of the same at any such transfer agency, in accordance with the provisions of its by-laws, is valid and binding as fully and effectually for all purposes as if made upon the books of such corporation at its principal office within this state. The agencies must be governed by the by-laws and the directors of the corporation.

History: En. Sec. 1010, Civ. C. 1895; re-en. Sec. 4403, Rev. C. 1907; re-en. Sec. 6648, R. C. M. 1921. Cal. Civ. C. Sec. 586.

Collateral References

Mines and Minerals 104.
56 C.J.S. Mines and Minerals § 255.

Cross-Reference

Fraudulent financing of mining corporations, secs. 94-2322 to 94-2325.

15-1602. (6649) Stock issued at transfer agencies. All stock of any such corporation issued at a transfer agency must be signed by the president and secretary of the corporation, and countersigned at the time of its issue by the agent having charge of the transfer agency. No stock must be issued at a transfer agency, unless the certificate of stock in lieu of which the same is issued is at the time surrendered for cancellation.

History: En. Sec. 1011, Civ. C. 1895; re-en. Sec. 4404, Rev. C. 1907; re-en. Sec. 6649, R. C. M. 1921. Cal. Civ. C. Sec. 587.

Collateral References

Mines and Minerals 104.
56 C.J.S. Mines and Minerals § 255.

15-1603. (6650) Consolidation or merger of mining corporations. It is lawful for two or more corporations formed under the laws of Montana territory, or of the state, or that may hereafter be formed under the laws of this state for mining ores, minerals or similar substances, or for the purpose of operating plants for reducing, milling, concentrating, smelting, converting, refining, preparing for market, or otherwise treating ores, minerals or similar substances, or authorized to engage in such business, and organized under the provisions of the law of this state, or existing thereunder, to consolidate or merge with one or more other like corporations organized under the laws of this or of any other state, or states, or territory of the United States of America, if the laws under which said other corporation or corporations are formed shall permit such consolidation or merger.

The constituent corporations may merge into a single corporation which may be any one of such constituent corporations, or they may consolidate to form a new corporation, which may be a corporation of the state of incorporation of any one of said constituent corporations as shall be specified in the agreement hereinafter required. All the constituent corporations shall enter into an agreement in writing which shall prescribe the terms and conditions of the consolidation or merger, the mode of carrying the same into effect, the manner of converting the shares of each of said constituent corporations into shares or other securities of the corporation resulting from or surviving such consolidation or merger, and such other details and provisions as shall be deemed necessary or proper. There shall also be set forth in said agreements such other facts as shall then be required to be set forth in the certificate of incorporation by the laws of the state which are stated in said agreement to be the laws that shall govern said resulting

or surviving corporation, and that can be stated in the case of a consolidation or merger.

Said agreement shall be authorized, adopted, approved, signed and acknowledged by each of said constituent corporations in accordance with the laws of the state under which it is formed. In the case of a Montana corporation the proposed agreement of consolidation or merger shall be submitted to the stockholders at a meeting thereof called separately for the purpose of taking the same into consideration; and due notice of the time, place and object of such meeting shall be given by publication at least once a week for four (4) successive weeks in one or more newspapers published in the county wherein such corporation either has its principal office or conducts its business, and a copy of such notice shall be mailed to the last known post-office address of each stockholder of such corporation at least twenty (20) days prior to the date of such meeting, and at said meeting said agreement shall be considered, and a vote by ballot (in person or by proxy) taken for the adoption or rejection of the same; and if the votes of stockholders of such corporation representing two-thirds ($\frac{2}{3}$) of the total number of shares of its capital stock shall be for the adoption of said agreement, then that fact shall be certified on said agreement by the secretary or assistant secretary of such corporation, under the seal thereof; and the agreement so adopted and certified shall be signed by the president or vice president, and secretary or assistant secretary of such corporation, under the corporate seal thereof, and acknowledged by the president or vice president of such corporation before any officer authorized by the laws of this state to make acknowledgments of deeds, to be the act, deed and agreement of said corporation; and a copy of said agreement and act of consolidation or merger, duly certified by the secretary of state, under the seal of his office, shall also be recorded in the offices of the recorders of the county of this state in which the corporation so consolidated or merged shall have its original certificate of incorporation recorded. The agreement so authorized, approved, signed and acknowledged and filed and recorded shall thenceforth be taken and deemed to be the act of consolidation or merger of the constituent corporations for all purposes of the laws of this state.

If the corporation resulting from or surviving such consolidation or merger is to be governed by the laws of any state other than the laws of this state, it shall agree that it may be served with process in this state in any proceeding for enforcement of any obligation of any constituent corporation of this state, as well as for enforcement of any obligation of the resulting or surviving corporation arising from the merger, and shall appoint either an agent in accordance with section 15-1701, or the secretary of state, to accept service of process in any action for the enforcement of payment of any such obligation, and if the secretary of state is appointed, such appointment shall specify the address to which a copy of such process shall be mailed by the secretary of state. Service of such process upon the secretary of state shall be made by personally delivering to or leaving with the secretary of state duplicate copies of such process. The secretary of state shall forthwith send by registered mail one of such copies to such resulting or surviving corporation at its address so specified, unless such

resulting or surviving corporation shall thereafter have designated in writing to the secretary of state a different address for such purpose, in which case it shall be mailed to the last address so designated.

When an agreement shall have been signed, acknowledged, filed and recorded, as in this section required for all purposes of the laws of this state, the separate existence of all the constituent corporations, parties to said agreement, or of all such constituent corporations, except the one into which the other or others of such constituent corporations have been merged, as the case may be, shall cease, and the constituent corporations shall become a new corporation, or be merged into one of such corporations, as the case may be, in accordance with the provisions of said agreement, possessing all the rights, privileges, powers and franchises, as well of a public as of a private nature, and being subject to all of the restrictions, disabilities and duties of each of such corporations so consolidated or merged, and all and singular, the rights, privileges, powers and franchises of each of said corporations, and all property, real, personal and mixed, and all debts due to any of said constituent corporations, of whatever account, as well as for stock subscription, as all other things in action or belonging to each of such corporations shall be vested in the corporation resulting from or surviving such consolidation or merger; and all property rights, privileges, powers and franchises, and all and every other interest shall be thereafter as effectually the property of the resulting or surviving corporation as they were of the several and respective constituent corporations, and the title to any real estate vested by deed or otherwise under the laws of this state in any of such constituent corporations shall not revert or be in any way impaired by reason of this section; provided, however, that all rights of creditors, and all liens upon any property of any of said constituent corporations shall be preserved unimpaired, and all debts, liabilities and duties of the respective constituent corporations shall thenceforth attach to said resulting or surviving corporation, and may be enforced against it to the same extent as if said debts, liabilities and duties had been incurred or contracted by it.

History: En. Sec. 527, Civ. C. 1895; re-en. Sec. 3896, Rev. C. 1907; re-en. Sec. 6650, R. C. M. 1921; amd. Sec. 1, Ch. 176, L. 1951. Cal. Civ. C. Sec. 587a.

Operation and Effect

If mining corporations may consolidate in any manner and upon any terms without restriction, they may proceed by conveying all their property to a corporation organized for that purpose, or by the purchase by one of the companies of stock of the others in whole or in part. Mac-

Ginnis v. B. & M. C. C. & S. M. Co., 29 M 428, 460, 75 P 89.

References

Cited or applied as section 3896, Revised Codes, in United Missouri River Power Co. v. Yoder, 41 M 245, 247, 108 P 912.

Collateral References

Mines and Minerals—102.
56 C.J.S. Mines and Minerals § 254.
Corporations, generally, 13 Am. Jur. 1088, §§ 1178 et seq.

CHAPTER 17

FOREIGN CORPORATIONS

- Section 15-1701. Foreign corporations—requirements to do business in state.
15-1702. Consent of agent.
15-1703. Contracts void if made before compliance with act.
15-1704. Annual statement.

- 15-1705. Violation of law a misdemeanor.
- 15-1706. Penalty for acting as agent.
- 15-1707. Corporations engaged in business at time of passage of act.
- 15-1708. Foreign corporations may exercise power of eminent domain.
- 15-1709. Liabilities, restrictions and powers.
- 15-1710. Jurisdiction over foreign corporations and joint-stock companies.
- 15-1711. Shares of stock subject to attachment.
- 15-1712. Withdrawal of foreign corporation from state.
- 15-1713. Extending corporate existence of foreign corporations and joint stock companies.

15-1701. (6651) Foreign corporations—requirements to do business in state. (1) All foreign corporations or joint stock companies, except foreign insurance companies and corporations otherwise provided for, organized under the laws of any state, or of the United States, or of any foreign government, shall before doing business within this state, file in the office of the secretary of state of Montana, a duly certified copy of their charter, or articles of incorporation, and also a statement, verified by oath of the president or a vice-president and attested by the secretary or assistant secretary of such corporation, and attested by not less than three (3) of its board of directors, showing:

1. The name of such corporation and the location of its principal office or place of business without this state, and the location of the place of business or principal office within this state;
2. The names and residences of the officers, trustees, or directors;
3. The amount of capital stock;
4. The amount of capital invested in the state of Montana.

(2) A copy of such charter or articles of incorporation, and such statement, duly certified by said secretary of state, shall be filed in the office of the county clerk of the county wherein its principal office or place of business in this state will be located. Such corporation or joint stock company shall also file, at the same time, and in the same office, a certificate, under the seal of the corporation, and the signature of its president or a vice-president and its secretary, if there be one, certifying that the said corporation has consented to all the license laws and other laws of the state of Montana relative to foreign corporations and has consented to be sued in the courts of this state, upon all causes of action arising against it in this state, and that service of process may be made upon some person, a citizen of this state, whose name and place of residence shall be designated in such certificate, and such service, when so made upon such agent, shall be valid service on the corporation or company.

(3) In case of alteration or amendment of the charter or articles of incorporation of any foreign corporation doing business in this state, it must, within thirty (30) days after the same is adopted by the corporation, file a duly certified copy of such amendment or alteration in the office of the secretary of state, and a copy thereof certified by said secretary of state in the office of the county clerk of the county where its principal office or place of business within this state is located.

(4) Any such corporation failing, neglecting, or refusing to file such duly certified copies of all alterations, or amendments, of its charter or articles of incorporation, or refusing to comply with any and all the laws of Montana relating to the payment of fees or licenses, shall forfeit its right

to do business in this state and shall be subject to all the penalties, liabilities, and restrictions imposed by law upon foreign corporations for doing business in this state without filing duly certified copies of their charters, or articles of incorporation, in the manner required by law; provided, however, that any foreign corporation now doing business in this state and which has filed a duly certified copy or a duly authenticated copy of its charter or articles of incorporation and also the verified statement and the certificate required by this section and has paid to the secretary of state all fees that are required by law, and any corporation which has altered or amended its charter or articles of incorporation since first filing a duly authenticated or a duly certified copy of its charter or articles of incorporation with the secretary of state, and which has heretofore filed a duly authenticated or a duly certified copy of such alterations, or amendments in the office of the secretary of state and in the office of the county clerk of the county where it has its principal office or place of business in this state and has paid to the secretary of state all fees that are required by law, shall be deemed to have fully complied with the requirements of this act and any defects in such filing shall be deemed to be corrected hereby, and such corporation is duly and validly qualified as a foreign corporation and is authorized to engage in business in the state of Montana, and such corporation is exempt from any penalties to which it may have been subject under the provisions of this act prior to this amendment.

History: Ap. p. Sec. 1, p. 8, Ex. L. 1879; re-en. Sec. 442, 5th Div. Comp. Stat. 1887; amd. Sec. 1030, Civ. C. 1895; amd. Sec. 1, p. 150, L. 1901; amd. Sec. 1, Ch. 181, L. 1907; re-en. Sec. 4413, Rev. C. 1907; amd. Sec. 1, Ch. 264, L. 1921; re-en. Sec. 6651, R. C. M. 1921; amd. Sec. 1, Ch. 31, L. 1937; amd. Sec. 1, Ch. 192, L. 1955.

Cross-References

Fees, secs. 25-103 to 25-109.

Publication of summons against foreign corporation, secs. 93-3013, 93-3014.

Service of process, secs. 93-3007 to 93-3011.

Applies to Causes of Action Arising in Montana, But Not Elsewhere

A Minnesota corporation complying with this statute by filing certificate consenting to be sued in courts of Montana on causes of action arising in Montana did not thereby consent to be sued in Montana federal district court by inhabitant of Illinois on cause of action arising in Minnesota so as to "waive" privilege in actions in which jurisdiction is based on diversity of citizenship of being sued only in district in which such corporation or plaintiff was a resident (Jud. Code Sec. 51, 28 U.S.C.A. Sec. 112). North Butte Mining Co. v. Tripp, 128 F 2d 588, 590.

Effect of Suspension on Statute of Limitations

Held, a statute of limitation against a foreign corporation is not tolled by the

suspension of the corporation's right to do business within the state since a person with a claim against the corporation could get service of process which would support a personal judgment under sections 93-3007 and 93-3011. Montana Valley Land Co. v. Bestul, 126 M 426, 253 P 2d 325.

Mortgage Foreclosure

All actions to foreclose mortgages on Montana land arise in and must be brought in Montana. Montana Valley Land Co. v. Bestul, 126 M 426, 253 P 2d 325, 327.

Right to Sue Before Filing Charter, Etc.

The failure of a foreign corporation to file a copy of its charter, or certificate of incorporation, with the secretary of the territory and in the recorder's office of the county wherein it intended to transact business, under a statute similar to the above, did not deprive it of the right to sue in the courts of the territory, where the cause of action was not based upon any act or contract of the corporation in the conduct of its business. Powder River Cattle Co. v. Commrs. of Custer County, 9 M 145, 149, 22 P 383.

Statutes prescribing the steps necessary to be taken by a foreign corporation before it can carry on business here merely prohibit the carrying on of business, and that the penalty for violating the law is that the acts and contracts in the course of such business are void; but the law does not deprive a foreign corporation of

any right to sue, although the law may prevent the enforcement of any contract by such foreign corporations as refuse to comply with the law. *Powder River Cattle Co. v. Commrs. of Custer County*, 9 M 145, 151, 22 P 383; *Uihlein v. Caplice Commercial Co.*, 39 M 327, 336, 102 P 564.

Non-compliance by a foreign corporation with a statute requiring the filing by such corporation of a copy of its charter or certificate with the county recorder, and subjecting it to a penalty and rendering void all its acts and contracts during the period it neglects to do so, is of no avail to a plaintiff seeking to enjoin an act of such corporation where the complaint fails to state a cause of action. *Hershfield v. Rocky Mt. Bell Tel. Co.*, 12 M 102, 119, 29 P 883.

In an action which is brought to recover the value of goods sold in this state, and in which the answer alleges and the reply admits that the plaintiff is a foreign corporation, and, at and before the time of the sale, was engaged in the business of selling goods, wares, and merchandise in the state of Montana, and that plaintiff had never complied with the laws of the state relating to foreign corporations, it is necessary for plaintiff to allege facts which show that the sale and delivery of the goods were of the nature of interstate commerce; and where he fails so to allege a motion for judgment on the pleadings is properly granted. *Kent & Stanley Co. v. Tuttle*, 20 M 203, 207, 50 P 559. See *Zion Merc. Assn. v. Mayo*, 22 M 100, 102, 55 P 915.

It is not necessary for a foreign corporation plaintiff, bringing action on a domestic contract, to allege that it has complied with the statutory conditions precedent to doing business in the state, where the petition shows facts making the transaction prima facie interstate commerce. *Zion Merc. Assn. v. Mayo*, 22 M 100, 101, 55 P 915. See *American Hand-Sewed Shoe Co. v. O'Rourke*, 23 M 530, 532, 59 P 910; *Leggat v. Gerrick*, 35 M 91, 94, 88 P 788; *Wilson v. Yegen Bros.*, 38 M 504, 509, 100 P 613.

Since it is unnecessary for a foreign corporation plaintiff, bringing action on a domestic contract, to allege in its complaint that it complied with the statutes of the state entitling it to do business therein, the question of its non-compliance therewith can only be raised by answer. *American Hand-Sewed Shoe Co. v. O'Rourke*, 23 M 530, 531, 59 P 910.

Status of a Foreign Corporation

This section gives to foreign corporations the right to do business in this state upon their filing a copy of their charter and designating an agent, and the filing

of his consent to act, etc.; that right is a mere license to engage in the business in this state which its charter authorizes it to engage in, and is based upon comity between the states. *Helena Power Transmission Co. v. Spratt*, 35 M 108, 131, 88 P 773.

A foreign corporation has no actual existence outside the state of its creation, and may do business in a sister state only by reason of comity between states; it is not a "person" within the privilege and immunity clause of the federal Constitution, and while it is considered a person or citizen within its equal protection clause, it cannot invoke that clause in another state until it has been duly admitted to do business therein. *Chicago etc. R. R. Co. v. Harmon*, 89 M 1, 6 et seq., 295 P 762.

The fact that corporation does not comply with the laws of Montana and has ceased to do business does not prevent it from redeeming its property sold at delinquent tax sale. *Stensvad v. Ottman*, 123 M 158, 208 P 2d 507, 512.

What Constitutes Doing Business in State

The shipping of beer into the state by a foreign corporation and selling the same to distributing agent did not constitute a carrying on of business in the state within the meaning of this section. *Uihlein v. Caplice Commercial Co.*, 39 M 327, 336, 102 P 564.

Making a single contract or purchase does not constitute doing business in this state within the meaning of this section and section 15-1703. *Uihlein v. Caplice Commercial Co.*, 39 M 327, 336, 102 P 564; *Dover Lumber Co. v. Whitcomb*, 54 M 141, 152, 168 P 947.

Isolated transactions, whereby a foreign corporation sells goods manufactured in another state and shipped into Montana by such corporation for use or installation, does not constitute the doing of business in this state within the meaning of this section and section 15-1703, prescribing the conditions under which foreign corporations may do business in the state. *General F. E. Co. v. Northwestern A. S. Co.*, 65 M 371, 211 P 308; *State et al. v. District Court et al.*, 98 M 278, 41 P 2d 26.

Where to File

The requirements of this section are complied with by filing the report with the recorder of the county where the principal office for doing business within the state is located, and need not be made in every county where the corporation may transact any item of business. *Manhattan Trust Co. v. Davis*, 23 M 273, 58 P 718.

References

Cited or applied as section 1030, Civil Code, before amendment, in State ex rel. Aachen & Munich F. Ins. Co. v. Rotwitt, 17 M 41, 47, 41 P 1004; State ex rel. Travelers' Ins. Co. v. Rotwitt, 18 M 87, 91, 44 P 409; State ex rel. Tel. Co. v. Mayor, 30 M 338, 342, 76 P 758; as Laws of 1901, p. 150, before amendment, in State v. Aetna Banking & Trust Co., 34 M 379, 381, 87 P 268; State v. Clements, 37 M 314, 319, 96 P 498; as section 4413, Revised Codes, in United Missouri River Power Co. v. Yoder, 41 M 245, 247, 108 P 912; State ex rel. General Electric Co. v. Alderson, 49 M 29, 30, 140 P 82; Pue v. Northern Pacific Ry. Co., 78 M 40, 43, 252 P 313; Harvey E. Mack Co. v. Ryan, 80 M 525, 530, 261 P 283.

Collateral References

Corporations \S 631; Joint-Stock Companies and Business Trusts \S 24.

12 C.J.S. Business Trusts \S 36; 20 C.J.S. Corporations \S 1789; 48 C.J.S. Joint-Stock Companies \S 6.

23 Am. Jur. 203, Foreign Corporations, \S 234 et seq.

Service of process upon actual agent of foreign corporation in action based on transactions outside of state. 30 ALR 255.

Foreign railway corporation as subject to service of process in state in which it merely solicits interstate business. 46 ALR 570.

Solicitation within state of orders for goods to be shipped from other states as doing business within state within statutes prescribing conditions of doing business or providing for service of process. 60 ALR 994.

Constitutionality, construction and effect of statute providing for service of process upon statutory agent in action against foreign corporation as regards communications to corporation of fact of service. 89 ALR 658.

Who, other than public official, may be served with process in action against foreign corporation doing business in state. 113 ALR 9.

Statute providing for service of process upon designated state official, in action against foreign corporation, as applicable to action based on transaction outside the state. 145 ALR 630.

Effect of execution of foreign corporation's contract which, while executory, was unenforceable because of noncompliance with conditions of doing business in state. 7 ALR 2d 256.

What constitutes multi-state incorporation for purposes of federal diversity of citizenship jurisdiction. 27 ALR 2d 745.

What constitutes doing business within state by a foreign magazine, newspaper, or other publishing corporation, for purposes other than taxation. 38 ALR 2d 747.

15-1702. (6652) Consent of agent. The written consent of the person so designated to act as such agent shall also be filed in like manner, and such designation shall remain in force until the filing in the same offices of a written revocation thereof, or of a consent, executed in like manner. A certified copy of a designation so filed, accompanied with a certificate that it has not been revoked, is presumptive evidence of the execution thereof, and conclusive evidence of the authority of the officer executing it.

A foreign corporation may from time to time change the address of its principal office in this state. A foreign corporation shall change its resident agent if the office of resident agent shall become vacant for any reason, or if its resident agent becomes disqualified or incapacitated to act, or if it revokes the appointment of its resident agent.

A foreign corporation may change the address of its principal office or change its resident agent, or both, by filing in the office of the secretary of state a statement setting forth:

(a) The name of the corporation.

(b) The address, including street and number, if any, of its then principal office.

(c) If the address of its principal office be changed, the address, including street and number, if any, to which the principal office is to be changed.

(d) The name of its then resident agent.

(e) If its resident agent be changed, the name of its successor resident agent.

Such statement shall be executed in duplicate by the corporation by its president or a vice president, and the corporate seal shall be thereto affixed, attested by its secretary or an assistant secretary, and shall be delivered to the secretary of state. If the secretary of state finds that such statement conforms to the provisions of this act, he shall:

(a) Endorse on each of such duplicate originals the word "Filed," and the month, day, and year of the filing thereof.

(b) File one of such duplicate originals in his office.

(c) Return the other duplicate original to the corporation or its representative.

The duplicate original returned by the secretary of state shall be filed for record in the office of the county clerk of the county in which the principal office of the corporation in this state was situated prior to the filing of such statement in the office of the secretary of state.

If the principal office is changed from one county to another county, then the corporation shall also file for record in the office of the county clerk of the county to which such principal office is changed:

(a) A copy of its charter, or articles of incorporation and all amendments thereto, certified by the secretary of state.

(b) A copy of the statement of change of address of its principal office.

The change of address of the principal office, or the change of resident agent, or both, as the case may be, shall become effective upon the filing of such statement by the secretary of state.

The resident agent for service of process designated by a foreign corporation may file with the secretary of state and with the county clerk of the county wherein the principal office or place of business in the state is located a signed statement that such agent is unwilling to continue to act as the agent of such corporation for the service of process. Upon the expiration of thirty (30) days after the filing of such statement with the secretary of state the authority of such agent shall terminate, and thereafter service of process on such foreign corporation may be made in accordance with the provisions of section 93-3008. Upon the filing of such statement the secretary of state forthwith shall give written notice, by mail, to such corporation of the filing of such statement and the effect thereof, which notice shall be addressed to such foreign corporation at its principal office or place of business as shown by the records of the secretary of state.

History: Ap. p. Sec. 2, p. 9, Ex. L. 1879; re-en. Sec. 443, 5th Div. Comp. Stat. 1887; amd. Sec. 1031, Civ. C. 1895; amd. Sec. 2, p. 151, L. 1901; re-en. Sec. 4414, Rev. C. 1907; re-en. Sec. 6652, R. C. M. 1921; amd. Sec. 1, Ch. 145, L. 1955.

Operation and Effect

A foreign corporation may revoke the authority of its statutory agent to receive service, even after a cause of action has accrued against it. *United Missouri River*

P. Co. v. Wisconsin B. & I. Co., 44 M 343, 348, 119 P 796.

References

Cited or applied as Laws of 1901, p. 150, in *State v. Clements*, 37 M 314, 319, 96 P 498; as section 4414, Revised Codes, in *State ex rel. General Electric Co. v. Alderson*, 49 M 29, 30, 140 P 82; *State et al. v. District Court et al.*, 98 M 278, 41 P 2d 26.

Collateral References

Corporations 646; Joint-Stock Companies and Business Trusts 24.
12 C.J.S. Business Trusts § 36; 20 C.J.S.

Corporations § 1815; 48 C.J.S. Joint-Stock Companies § 6.
23 Am. Jur. 526, Foreign Corporations, §§ 505 et seq.

15-1703. (6653) Contracts void if made before compliance with act. If any foreign corporation shall attempt or commence to do business in this state without having first filed said statement, certificate, and consent, required by this act, or without complying with any or all of the laws of Montana relating to the payment of fees or licenses, no contract made by such corporation, or any agent or agents thereof, during said time, shall be enforceable by the corporation until the foregoing provisions have been complied with.

History: En. Sec. 3, p. 151, L. 1901; re-en. Sec. 1032, Civ. C. 1895; re-en. Sec. 4415, Rev. C. 1907; amd. Sec. 2, Ch. 264, L. 1921; re-en. Sec. 6653, R. C. M. 1921.

Dover Lumber Co. v. Whitecomb, 54 M 141, 152, 168 P 947; General F. E. Co. v. Northwestern A. S. Co., 65 M 371, 211 P 308; State et al. v. District Court et al., 98 M 278, 41 P 2d 26.

Non-compliance by Foreign Corporation—Effect

Where foreign corporation for five years conducted business without qualifying, paid no corporation license tax, filed no annual report, the foreign corporation could not enforce a contract made during those 5 years. Later compliance is not sufficient to remove the bar of the statute. Hutterian Brethren of Wolf Creek v. Haas, 116 F Supp 37.

References

Cited or applied as Laws of 1901, p. 150, in State v. Clements, 37 M 314, 319, 96 P 498; as section 4415, Revised Codes, in

Collateral References

Corporations 657.
20 C.J.S. Corporations § 1843 et seq.

Right of foreign corporation or its assignees to maintain an action in federal court which it could not have maintained in state court because of noncompliance with conditions of doing business in state. 133 ALR 1171.

Effect of execution of foreign corporation's contract which while executory, was unenforceable because of noncompliance with conditions of doing business in state. 7 ALR 2d 256.

15-1704. (6654) Annual statement. Every corporation enumerated in section 15-1701 of this code shall annually and within two months from the first day of April of each year make a report, which shall be in the same form and shall contain the same information as required in the statements mentioned in said section, and, in addition, shall contain the following information:

1. The gross amount of its business in the state of Montana for the preceding year.
2. The amount of money actually expended in transacting its business in the state of Montana for the preceding year.
3. The net profits on its business transacted in Montana for the preceding year.

Said report shall be filed in the office of the county clerk of the county wherein the principal business of such corporation is carried on and the duplicate thereof in the office of secretary of state.

History: En. Sec. 4, p. 9, Ex. L. 1879; re-en. Sec. 445, 5th Div. Comp. Stat. 1887; amd. Sec. 1033, Civ. C. 1895; amd. Sec. 4, p. 151, L. 1901; re-en. Sec. 4416, Rev. C. 1907; amd. Sec. 3, Ch. 264, L. 1921; re-en. Sec. 6654, R. C. M. 1921.

Cross-Reference

Report of capital stock and assets in Montana, secs. 25-104 to 25-109.

References

Cited or applied as section 1033, Civil Code, before amendment, in State ex rel.

Aachen & Munich F. Ins. Co. v. Rotwitt, 17 M 41, 47, 41 P 1004; as Laws of 1901, p. 150, in State v. Clements, 37 M 314, 319, 96 P 498; Hutterian Brethren of Wolf Creek v. Haas, 116 F Supp 37.

Collateral References

Corporations⌚649.
20 C.J.S. Corporations § 1819.

15-1705. (6655) Violation of law a misdemeanor. Every foreign corporation doing business in this state, contrary to the provisions of this act, is guilty of a misdemeanor.

History: En. Sec. 5, p. 151, L. 1901; re-en. Sec. 4417, Rev. C. 1907; re-en. Sec. 6655, R. C. M. 1921.

Cross-Reference

Failure to comply with law, penalty, sec. 94-2317.

References

Cited or applied as Laws of 1901, p. 150, in State v. Clements, 37 M 314, 319, 96 P 498; Hutterian Brethren of Wolf Creek v. Haas, 116 F Supp 37, 40.

15-1706. (6656) Penalty for acting as agent. Every person who acts as agent or in any other capacity for a foreign corporation, who has not complied with the provisions of law relating to foreign corporations, is guilty of a misdemeanor.

History: En. Sec. 6, p. 151, L. 1901; re-en. Sec. 4418, Rev. C. 1907; re-en. Sec. 6656, R. C. M. 1921.

References

Cited or applied as Laws of 1901, p. 150,

in State v. Clements, 37 M 314, 319, 96 P 498.

Collateral References

Corporations⌚652, 678.
20 C.J.S. Corporations §§ 1861, 1960.

15-1707. (6657) Corporations engaged in business at time of passage of act. Any foreign corporation or joint-stock company now engaged in carrying on business in Montana, which has heretofore filed a copy of its charter or articles of incorporation, a statement, certificate designating an agent upon whom service of summons and other process may be made, and the consent of such agent, in compliance with the provisions of sections 15-1701 to 15-1708 of this code, shall not be required to comply with the provisions of sections 15-1701 and 15-1702 of this code; provided, that if the agent designated and appointed by such corporation or joint-stock company does not now reside in this state, or has resigned, or his appointment has been revoked, or if he shall hereafter reside out of the state, or resign, or his appointment be revoked, such corporation or joint-stock company shall be required to designate another agent and file such designation and the consent of such agent in accordance with the provisions of this act.

History: En. Sec. 8, p. 152, L. 1901; re-en. Sec. 4419, Rev. C. 1907; re-en. Sec. 6657, R. C. M. 1921.

References

Cited or applied as Laws of 1901, p. 150, in State v. Clements, 37 M 314, 319, 96 P 498.

Collateral References

Corporations⌚643; Joint-Stock Companies and Business Trusts⌚24.
12 C.J.S. Business Trusts § 36; 20 C.J.S. Corporations §§ 1813, 1843; 48 C.J.S. Joint-Stock Companies § 6.

15-1708. (6658) Foreign corporations may exercise power of eminent domain. Any corporation, organized under the laws of any state of the United States, or the laws of the United States, and authorized to engage in business in this state, and engaged in business in this state, may acquire real property as provided in sections 93-9901 to 93-9926, to the same extent,

for the same purposes, and in the same manner, as corporations organized under the laws of this state.

History: En. Sec. 1, Ch. 23, L. 1907; re-en. Sec. 4420, Rev. C. 1907; re-en. Sec. 6658, R. C. M. 1921.

Operation and Effect

By section 15-1708 et seq. the legislature intended to give foreign corporations the same power to exercise eminent domain as domestic corporations enjoy. *Spratt v. Helena Power Transmission Co.*, 37 M 60, 79, 94 P 631.

Id. The concluding words of this section, "to the same extent, for the same purposes, and in the same manner, as corporations organized under the laws of this state," while intended to place domestic and foreign corporations upon an equality in the exercise of the right of eminent domain, were also intended as words of limitation, to the end that foreign corporations shall have no greater privileges than domestic ones.

15-1709. (6659) Liabilities, restrictions and powers. All foreign corporations licensed to do business in the state of Montana shall be subject to all the liabilities, restrictions, and duties which are or may be imposed upon corporations of like character organized under the laws of this state, and shall have no other or greater powers.

History: En. Sec. 1, Ch. 149, L. 1917; re-en. Sec. 6659, R. C. M. 1921.

Attachment Before Foreign Liquidator Has Taken Possession of Property

In action by liquidator of foreign corporation attacking attachment of corporation's property in Montana to satisfy Montana judgment which was secured after dissolution of corporation in New York, decisions of supreme court of Montana, construing local constitution and statutes, that local creditor of corporation may protect himself by attachment of corporation's property before foreign liquidator has taken possession of property, held binding on United States district court. *Van Schaick v. Parsons*, 11 F Supp 654, 657.

Operation and Effect

Held, that under section 15-1202, declaring that dissolution of a domestic corporation does not take away or impair any remedy given against it for a liability previously incurred, and this section, providing that foreign corporations doing business in the state are subject to all the liabilities and restrictions imposed upon domestic corporations, and section 11, Article XV, Constitution, saying that no foreign corporation shall enjoy

A foreign corporation, admitted to do business in this state, has, in respect to exercising the power of eminent domain, no right superior to that of a domestic corporation engaged in the same line of business; hence, if a domestic corporation, engaged in the express business, is not authorized to invoke the power of eminent domain to any extent or for any purpose, a foreign corporation is not authorized to do so, and has therefore no special privilege, in that direction, taxable as a franchise. *Wells Fargo & Co. v. Harrington*, 54 M 235, 241, 169 P 463.

References

State ex rel. Continental S. Co. v. Tullock, 68 M 268, 278, 217 P 348.

Collateral References

Eminent Domain ¶10(3).
29 C.J.S. *Eminent Domain* § 25.

any greater rights or privileges in the state than those created under its laws, an action against an Iowa surety company pending in a state court did not abate upon its dissolution in Iowa, and that a judgment obtained after decree of dissolution was valid. *Mieyr v. Federal Surety Co. of Davenport*, 94 M 508, 521 et seq., 23 P 2d 959, modified, *Clark v. Williard*, 292 U S 112, 78 L Ed 1160, 54 S Ct 615.

Collateral References

Corporations ¶639.
20 C.J.S. *Corporations* § 1822.
23 Am. Jur. 27, *Foreign Corporations*, §§ 15 et seq.

Citizenship, domicile, residence, or location of national corporations. 69 ALR 1346.

Applicability to foreign corporations of statute precluding defense of want of legal organization. 73 ALR 1202.

Effect of domestication of foreign corporations. 126 ALR 1503.

Right of foreign corporation or its assignee to maintain an action in federal court which it could not have maintained in state court because of noncompliance with conditions of doing business in state. 133 ALR 1171.

15-1710. (6660) Jurisdiction over foreign corporations and joint-stock companies. All foreign corporations or joint-stock companies, except for-

foreign insurance companies and corporations otherwise provided for, organized under the laws of any other state or territory of the United States, or of the United States, or of any foreign government, and doing business in this state, or, which may hereafter engage in business in this state, shall be deemed and taken to be corporations of this state for purposes of jurisdiction, and shall be subject to the jurisdiction of the courts of this state, and may sue and be sued therein in the mode and manner that is or may be by law directed in the case of corporations created or organized under the laws of this state.

History: En. Sec. 1, Ch. 109, L. 1909; re-en. Sec. 6660, R. C. M. 1921.

Operation and Effect

In the absence of statute giving foreign corporations a domestic residence, they remain nonresidents of the state and may, under section 93-6601, subdivision 5, be sued in a justice court in any township of the state. *Pue v. Northern Pacific Ry. Co.*, 78 M 40, 43, 252 P 313.

District court has jurisdiction under resident stockholders' bill against nonresident directors and foreign corporation, all of whose property, except books and office furniture, is within state, to conserve through receivership corporation's business and assets from looting by nonresident directors. *Shoemaker v. Merrill Mortuaries*, 2 F Supp 672.

Collateral References

Corporations⊖664, 665; Joint-Stock Companies and Business Trusts⊖24.

12 C.J.S. Business Trusts § 36; 20 C.J.S. Corporations §§ 1906, 1917; 48 C.J.S. Joint-Stock Companies § 6.

23 Am. Jur. 474, Foreign Corporations, §§ 487 et seq.

Jurisdiction of action or proceeding involving internal affairs of foreign corporation. 18 ALR 1383.

Solicitation within state of orders for goods to be shipped from other states as doing business within state within statutes prescribing conditions of doing business or providing for service of process. 60 ALR 994.

Power of state to subject foreign corporation to jurisdiction of its courts on sole ground that corporation committed tort within state. 25 ALR 2d 1202.

15-1711. (6661) Shares of stock subject to attachment. The stocks or shares of such foreign corporations and joint-stock companies, doing business in this state, shall be subject to attachment in the same manner as now provided by law in the case of domestic corporations.

History: En. Sec. 2, Ch. 109, L. 1909; re-en. Sec. 6661, R. C. M. 1921.

Cross-Reference

Attachment of corporate stock, secs. 93-4306 to 93-4309.

Joint-Stock Companies and Business Trusts⊖24.

7 C.J.S. Attachment § 79; 12 C.J.S. Business Trusts § 36; 20 C.J.S. Corporations § 1930; 48 C.J.S. Joint-Stock Companies § 6.

Collateral References

Attachment⊖56; Corporations⊖670;

15-1712. (6661.1) Withdrawal of foreign corporation from state. A foreign corporation having authority under sections 15-1701 and 15-1702 to do business in this state, may surrender such authority by filing in the office of the secretary of state, a certificate under its corporate seal and the signature of its president, vice-president, or other acting head, setting forth:

1. The name of the corporation and the state under whose laws it is incorporated.

2. The date on which it received authority to do business in this state.

3. Revoking its designation of the person upon whom process against the corporation may be served in this state.

4. That it surrenders its authority to do business in this state and that, as evidence of such surrender, it returns to the secretary of state, for can-

cellation, the certificate issued by the secretary of state; provided that if such certificate has been lost or destroyed, affidavit as hereinafter provided shall be filed in lieu of such original certificate.

5. That it agrees that service thereafter may be made upon the corporation in any suit based upon contracts or torts or causes of action arising in the state of Montana during the time the corporation was authorized to transact business in this state, by serving the secretary of state, who for that purpose is hereby made the agent of the corporation.

Proof of execution in the form prescribed by section 39-112 shall be attached. The certificate of authority shall be attached to the certificate of surrender, unless such certificate of authority has been lost or destroyed, in which event, there shall be attached an affidavit of the president, vice-president, secretary, or other officer of the corporation, to the effect that such certificate has been lost or destroyed, as the case may be. On the filing of such certificate, the secretary of state shall make a note of the filing thereof on his index of corporations and thereupon the authority of the corporation to do business within this state shall cease and terminate, and no such corporation doing business in this state after the filing of such certificate of surrender of authority shall maintain any action in this state upon any contract made by it in this state subsequent to the filing of such certificate of surrender of authority. The filing of such certificate shall not, however, affect any action pending at the time of such surrender, or affect any action in the state upon any contract as to it or cause of action arising in this state before the filing of the certificate of surrender of authority.

History: En. Sec. 1, Ch. 170, L. 1931. it may be readmitted to do business in state and its rights and duties if readmitted. 110 ALR 528.

Collateral References

Corporations 651.
20 C.J.S. Corporations § 1843.
23 Am. Jur. 308, Foreign Corporations, 133 ALR 774.
§§ 330 et seq.

Withdrawal of foreign corporation from state as affecting conditions under which

15-1713. Extending corporate existence of foreign corporations and joint stock companies. Any foreign corporation or joint stock company, except a foreign insurance company or a corporation otherwise provided for, organized under the laws of any state, or of the United States, or any foreign government, and which has heretofore qualified to do business in this state and which has continuously thereafter done business as such in this state, whose term of corporate existence in the state of Montana has expired or is about to expire under Montana law, if the same has not been administered upon as an expired corporation, or gone into liquidation or had any settlement of its affairs, or any foreign corporation or joint stock company, except a foreign insurance company or a corporation otherwise provided for, which hereafter so qualifies and so continuously does business thereafter, may have the term of its corporate existence extended for a period within the limits provided for corporate existence by the laws of Montana, by filing a renewal certificate of its corporate existence. The renewal of the corporate existence in this state of a foreign corporation in accordance with this section, when authorized by the stockholders or

by the board of directors or trustees of such corporation, may be made by filing a renewal certificate of its corporate existence, executed by the president and secretary of such corporation under its corporate seal, in the office of the secretary of state of Montana. Such renewal certificate shall set forth the period of time for which such corporate existence is to be extended. Every such foreign corporation shall also file with such renewal certificate a sworn statement, under its corporate seal, setting forth the entire amount of its capital stock and that proportion hereof which is represented by the corporate property, capital and assets employed and located in the state of Montana. Upon the filing of such renewal certificate and statement, and the payment of the fees in proportion to their capital stock employed within the state of Montana as are required for the extension of like domestic corporations in accordance with section 25-102, such foreign corporation shall be authorized to continue to do business in the state of Montana for the period of such extension.

History: En. Sec. 1, Ch. 5, L. 1951.

Cross-Reference

Period of existence of domestic corporations, sec. 15-108.

CHAPTER 18

MERGER OF CORPORATIONS ENGAGED IN PETROLEUM PRODUCTS BUSINESS

- Section 15-1801. Oil, gas and other petroleum products corporations may merge or consolidate—agreement for merger or consolidation.
- 15-1802. Meeting of stockholders to be called and agreement submitted—vote necessary for adoption—signing adopted agreement.
- 15-1803. Service of process on resulting corporation.
- 15-1804. When constituent corporations cease—property rights, liabilities, etc., vest in surviving corporation.
- 15-1805. Rights of objecting stockholders—notice of merger.
- 15-1806. Actions pending not affected.
- 15-1807. Prior mergers and consolidations validated.

15-1801. Oil, gas and other petroleum products corporations may merge or consolidate—agreement for merger or consolidation. Any one or more corporations engaged in the production, marketing, or refining of oil, gas or other petroleum products or otherwise engaged in the oil, gas or petroleum products business organized under the provisions of the law of this state, or existing thereunder, may consolidate or merge with one (1) or more other like corporations organized under the laws of this or of any other state or states or territory of the United States of America if the laws under which said other corporation or corporations are formed shall permit such consolidation or merger.

The constituent corporations may merge into a single corporation which may be any one of said constituent corporations, or they may consolidate to form a new corporation which may be a corporation of the state of incorporation of any one of said constituent corporations or shall be specified in the agreement hereinafter required. All the constituent corporations shall enter into an agreement in writing which shall prescribe the terms and conditions of the consolidation or merger, the mode of carrying the same into effect, the manner of converting the shares of each of said constituent corporations into shares of the corporation resulting from or surviving such

consolidation or merger and such details and provisions as shall be deemed necessary or proper. In case of consolidation to form a new corporation there shall also be set forth in said agreement such other facts as shall then be required to be set forth in certificates of incorporation by the laws that shall govern said resulting corporation and that can be stated in the case of a consolidation.

Said agreement shall be authorized, adopted, approved, signed and acknowledged by each of said constituent corporations in accordance with the laws under which it is formed and in the case of a Montana corporation in the manner provided in section 15-1802. The agreement so authorized, adopted, approved, signed and acknowledged shall be filed in the office of the secretary of state and a copy of such agreement certified by the secretary of state under the great seal of the state of Montana, shall be filed but need not be recorded in the office of the county clerk of the county in this state wherein such resulting or surviving corporation maintains its principal place of business, if any, and also, in each other county in this state in which such corporation may own real estate, provided, however, that a failure to file such certified copy in the office of any county clerk of any county in this state shall not affect the validity of said merger or consolidation. Said agreement so filed in the office of the secretary of state shall thenceforth be taken and deemed to be the agreement and act of consolidation or merger of said constituent corporations for all purposes of the laws of this state and said consolidation or merger shall take effect as of the date of the filing of said agreement with the secretary of state who shall, at the time of such filing, receive a fee of five dollars (\$5.00) therefor. A copy of such agreement certified to be such by the secretary of state under the great seal of the state of Montana, shall be evidence of such merger or consolidation and of the contents of said agreement.

History: En. Sec. 1, Ch. 295, L. 1947.

Collateral References

Corporations—581 et seq.

19 C.J.S. Corporations §1605 et seq.

15-1802. Meeting of stockholders to be called and agreement submitted—vote necessary for adoption—signing adopted agreement. In the case of a Montana corporation, the proposed agreement of consolidation or merger shall be signed by the trustees or directors or majority of them, or by the stockholders representing a majority of the stock of such corporation under the corporate seal, and such proposed agreement shall be submitted to the stockholders at a meeting thereof called by its trustees or directors or by the stockholders representing a majority of the stock by giving public notice of the time and place of holding such meeting and stating that said meeting is called to consider consolidation or merger with one or more other named corporations by publishing the same at least once not more than thirty (30) nor less than ten (10) days prior to the date fixed for said meeting, in a newspaper printed in the county where the principal office of such corporation is located as specified in its articles of incorporation or by-laws, or if there be no such newspaper, then in a newspaper printed in an adjoining county, and by delivering personally to each stockholder, or depositing in the post office at least thirty (30) days before such meeting a copy of said notice addressed to each stockholder, signed by the president or

secretary, or having the name of the president or secretary printed thereon stating the time, place and objects of said meeting, provided, however, a waiver of such notice in writing, signed by a stockholder, whether before, at or after the date of such meeting, shall be deemed equivalent to such notice and, in case all of the stockholders of any corporation entering into such agreement shall sign such waivers, no notice of such meeting of stockholders of such corporation need be given in any manner. Each Montana corporation desiring so to consolidate or merge shall vote upon the proposition embodied in said agreement, which shall be presented at said meeting. If at least two-thirds ($\frac{2}{3}$) of the stock of each Montana corporation severally shall vote in favor of the adoption of said agreement in writing, the fact shall be certified on said agreement by the secretary of each such corporation under the seal thereof, and the agreement so adopted and certified shall be signed by the president and secretary of each such corporation under the corporate seal thereof and acknowledged by the president of each corporation before any officer authorized by the laws of this state to take acknowledgments of deeds to be the respective act, deed and agreement of each of said corporations.

History: En. Sec. 2, Ch. 295, L. 1947.

15-1803. Service of process on resulting corporation. If the corporation resulting or surviving such consolidation or merger is to be governed by the laws of any state other than the laws of this state, it shall agree that it may be served with process in this state in any proceeding for enforcement of any obligation of any constituent corporation of this state, including an amount fixed by appraisers pursuant to section 15-1805, and shall irrevocably appoint the secretary of state as its agent to accept service of process in any action for the enforcement of payment of any such obligation, or any amount fixed by appraisers as aforesaid, and shall specify the address to which a copy of such process shall be mailed by the secretary of state. Service of such process shall be made by personally delivering to and leaving with the secretary of state duplicate copies of such process. The secretary of state shall forthwith send by registered mail one (1) of such copies to such resulting or surviving corporation at its address so specified, unless such resulting or surviving corporation shall thereafter have designated in writing to the secretary of state a different address for such purpose, in which case it shall be mailed to the last address so designated. Said agreement shall be in writing, shall be filed with the secretary of state at the time of filing the agreement mentioned in the preceding sections of this act and whenever the agreement provided for in this section 15-1803, when required thereby, shall not be so filed, the secretary of state shall refuse to accept the agreement mentioned in sections 15-1801 and 15-1802. For filing the agreement required by this section the secretary of state shall receive a fee of five dollars (\$5.00).

History: En. Sec. 3, Ch. 295, L. 1947.

15-1804. When constituent corporations cease—property rights, liabilities, etc., vest in surviving corporation. When an agreement shall have been signed, acknowledged and filed in the office of the secretary of state as in sections 15-1801 and 15-1802 is required, for all purposes of the laws of

this state the separate existence of all the constituent corporations, parties to said agreement, or all of such constituent corporations except the one into which the other of such constituent corporations have been merged, as the case may be, shall cease and the constituent corporations shall become a new corporation, or be merged into one of such corporations, as the case may be, in accordance with the provisions of said agreement, possessing all the rights, privileges, powers and franchises as well of a public as of a private nature, and being subject to all the restrictions, disabilities and duties of each of such corporations so consolidated or merged, and all and singular, the rights, privileges, power and franchises of each of said corporations, and all property, real, personal and mixed, and all debts due to any of said constituent corporations on whatever account, as well for stock subscriptions as all other things in action or belonging to each of such corporations shall be vested in the corporation resulting from or surviving such consolidation or merger; and all property, rights, privileges, powers and franchises, and all and every other interest shall be thereafter as effectually the property of the several and respective constituent corporations, and the title to any real estate, whether vested by deed or otherwise, under the laws of this state, vested in any of such constituent corporations, shall not revert or be in any way impaired by reason of this statute; provided, however, that all rights of creditors and all liens upon any property of any of said constituent corporations shall be preserved unimpaired, and all debts, liabilities and duties of the respective constituent corporations shall thenceforth attach to said resulting or surviving corporation, and may be enforced against it to the same extent as if said debts, liabilities and duties had been incurred or contracted by it.

History: En. Sec. 4, Ch. 295, L. 1947.

15-1805. Rights of objecting stockholders—notice of merger. If any stockholder in any corporation of this state consolidating or merging as aforesaid, who objected thereto in writing, shall within twenty (20) days after the date on which the agreement of consolidation or merger has been filed in the office of the secretary of state, as aforesaid, demand in writing from the corporation resulting from or surviving such consolidation or merger payment of his stock, such resulting or surviving corporation shall, within three (3) months thereafter, pay to him the value of his stock as of the effective date of said consolidation or merger, exclusive of any element of value arising from the expectation or accomplishment of such consolidation or merger, but in no event less than the amount paid by such stockholder for his stock. Notice of the effective date of such merger shall be mailed by ordinary mail to each stockholder of any corporation so merged within five (5) days after said effective merger date. If within thirty (30) days after the date of such written demand the corporation and such stockholder fail to come to an agreement as to such value of such stock, each stockholder may demand an appraisal of his stock by three (3) disinterested persons, one (1) of whom shall be designated by the stockholder, one (1) by the directors of the resulting or surviving corporation and the other by the two (2) designated as aforesaid and such stockholder may serve written notice on such corporation designating therein one appraiser and requiring the corporation to designate a second appraiser within thirty (30) days from the

date of service of such notice. If within thirty (30) days from the date of service of such notice the corporations shall have failed to designate a second appraiser or if the two (2) appraisers first designated shall fail to designate a third appraiser within thirty (30) days from the designation of the second appraiser, such stockholder may apply to the district court of the district in which the principal place of business of said corporation is located to designate a second and third appraiser, or a third appraiser, as the case may be. The decision of the appraisers as to such value of such stock shall be final and binding upon the corporation if the value so determined equals or exceeds the amount paid by such stockholder for such stock. In case the value of such stock as so fixed by the appraisers, or the amount paid for such stock by such stockholder, whichever is the greater amount, is not paid to such stockholder within sixty (60) days from the date of such decision and of notice thereof given to the corporation, such amount may be collected as other debts are by law collectible from the resulting or surviving corporation. Upon receipt of payment in full for such stock, such stockholder shall transfer his stock to said resulting or surviving corporation, to be disposed of by the directors thereof, or to be retained for the benefit of the remaining stockholders.

History: En. Sec. 5, Ch. 295, L. 1947.

15-1806. Actions pending not affected. Any action or proceeding pending by or against any of the corporations consolidated or merged may be prosecuted to judgment, as if such consolidation or merger had not taken place or the corporation resulting from or surviving such consolidation or merger may be substituted in its place.

History: En. Sec. 6, Ch. 295, L. 1947.

15-1807. Prior mergers and consolidations validated. All mergers and consolidations and attempted mergers and consolidations in the accomplishment of which the provisions of this act have been substantially followed, are hereby validated and confirmed.

History: En. Sec. 7, Ch. 295, L. 1947.

CHAPTER 19

CONSOLIDATION OR MERGER OF CORPORATIONS

- Section 15-1901. Certain corporations may merge or consolidate—agreement for merger or consolidation.
- 15-1902. Meeting of stockholders to be called and agreement submitted—vote necessary for adoption—signing adopted agreement.
- 15-1903. Service of process on resulting corporation.
- 15-1904. When constituent corporations cease—property rights, liabilities, etc., vest in surviving corporation.
- 15-1905. Rights of objecting stockholders—notice of merger.
- 15-1906. Actions pending not affected.
- 15-1907. Prior mergers and consolidations validated.
- 15-1908. Other laws unaffected.

15-1901. Certain corporations may merge or consolidate—agreement for merger or consolidation. Except as otherwise specifically provided by the constitution or existing laws of the state of Montana any one or more corporations organized under the provisions of the law of this state or

existing thereunder; may consolidate or merge with one or more other corporations organized under the laws of this or of any other state or states or territory of the United States of America if the laws under which said other corporation or corporations are formed shall permit such consolidation or merger.

The constituent corporations may merge into a single corporation which may be any one of said constituent corporations, or they may consolidate to form a new corporation which may be a corporation of the state of incorporation of any one of said constituent corporations or [as] shall be specified in the agreement hereinafter required. All the constituent corporations shall enter into an agreement in writing which shall prescribe the terms and conditions of the consolidation or merger, the mode of carrying the same into effect, the manner of converting the shares of each of said constituent corporations into shares of the corporation resulting from or surviving such consolidation or merger and such details and provisions as shall be deemed necessary or proper. In case of consolidation to form a new corporation there shall also be set forth in said agreement such other facts as shall then be required to be set forth in certificates of incorporation by the laws that shall govern said resulting corporation and that can be stated in the case of a consolidation.

Said agreement shall be authorized, adopted, approved, signed and acknowledged by each of said constituent corporations in accordance with the laws under which it is formed and in the case of a Montana corporation in the manner provided in section 15-1902 hereof. The agreement so authorized, adopted, approved, signed and acknowledged shall be filed in the office of the secretary of state and a copy of such agreement certified by the secretary of state under the great seal of the state of Montana, shall be filed but need not be recorded in the office of the county clerk of the county in this state wherein such resulting or surviving corporation maintains its principal place of business, if any, and also, in each other county in this state in which such corporation may own real estate, provided, however, that a failure to file such certified copy in the office of any county clerk of any county in this state shall not affect the validity of said merger or consolidation. Said agreement so filed in the office of the secretary of state shall thenceforth be taken and deemed to be the agreement and act of consolidation or merger of said constituent corporations for all purposes of the laws of this state and said consolidation or merger shall take effect as of the date of the filing of said agreement with the secretary of state who shall, at the time of such filing, receive a fee of five dollars (\$5.00) therefor. A copy of such agreement certified to be such by the secretary of state under the great seal of the state of Montana, shall be evidence of such merger or consolidation and of the contents of said agreement.

History: En. Sec. 1, Ch. 175, L. 1951.

19 C.J.S. Corporations § 1617.

Compiler's Note

The bracketed word "as" was added by the compiler.

Merger or consolidation as creating multistate corporation for purposes of federal diversity of citizenship jurisdiction. 27 ALR 2d 777.

Collateral References

Corporations—585.

15-1902. Meeting of stockholders to be called and agreement submitted—vote necessary for adoption—signing adopted agreement. In the case of a Montana corporation, the proposed agreement of consolidation or merger shall be signed by the trustees or directors or majority of them, or by the stockholders representing a majority of the stock of such corporation under the corporate seal, and such proposed agreement shall be submitted to the stockholders at a meeting thereof called by its trustees or directors or by the stockholders representing a majority of the stock by giving public notice of the time and place of holding such meeting and stating that said meeting is called to consider consolidation or merger with one or more other named corporations by publishing the same at least once not more than thirty (30) nor less than ten (10) days prior to the date fixed for said meeting, in a newspaper printed in the county where the principal office of such corporation is located as specified in its articles of incorporation or by-laws, or if there be no such newspaper, then in a newspaper printed in an adjoining county, and by delivering personally to each stockholder, or depositing in the post office at least thirty (30) days before such meeting a copy of said notice addressed to each stockholder, signed by the president or secretary, or having the name of the president or secretary printed thereon stating the time, place and objects of said meeting, provided, however, a waiver of such notice in writing, signed by a stockholder, whether before, at or after the date of such meeting, shall be deemed equivalent to such notice and, in case all of the stockholders of any corporation entering into such agreement shall sign such waivers, no notice of such meeting of stockholders of such corporation need be given in any manner. Each Montana corporation desiring so to consolidate or merge shall vote upon the proposition embodied in said agreement, which shall be presented at said meeting. If at least two-thirds ($\frac{2}{3}$) of the stock of each Montana corporation severally shall vote in favor of the adoption of said agreement in writing, the fact shall be certified on said agreement by the secretary of each such corporation under the seal thereof, and the agreement so adopted and certified shall be signed by the president and secretary of each such corporation under the corporate seal thereof and acknowledged by the president of each corporation before any officer authorized by the laws of this state to take acknowledgments of deeds to be the respective act, deed and agreement of each of said corporations.

History: En. Sec. 2, Ch. 175, L. 1951.

15-1903. Service of process on resulting corporation. If the corporation resulting or surviving such consolidation or merger is to be governed by the laws of any state other than the laws of this state, it shall agree that it may be served with process in this state in any proceeding for enforcement of any obligation of any constituent corporation of this state, including an amount fixed by appraisers pursuant to section 15-1905 hereof, and shall irrevocably appoint the secretary of state as its agent to accept service of process in any action for the enforcement of payment of any such obligation, or any amount fixed by appraisers as aforesaid, and shall specify the address to which a copy of such process shall be mailed by the secretary of state. Service of such process shall be made by personally delivering to and leaving with the secretary of state duplicate copies

of such process. The secretary of state shall forthwith send by registered mail one (1) of such copies to such resulting or surviving corporation at its address so specified, unless such resulting or surviving corporation shall thereafter have designated in writing to the secretary of state a different address for such purpose, in which case it shall be mailed to the last address so designated. Said agreement shall be in writing, shall be filed with the secretary of state at the time of filing the agreement mentioned in the preceding sections of this act and whenever the agreement provided for in this section 15-1903, when required thereby, shall not be so filed, the secretary of state shall refuse to accept the agreement mentioned in sections 15-1901 and 15-1902. For filing the agreement required by this section 15-1903 the secretary of state shall receive a fee of five dollars (\$5.00).

History: En. Sec. 3, Ch. 175, L. 1951.

15-1904. When constituent corporations cease—property rights, liabilities, etc., vest in surviving corporation. When an agreement shall have been signed, acknowledged and filed in the office of the secretary of state as in sections 15-1901 and 15-1902 is required, for all purposes of the laws of this state the separate existence of all the constituent corporations, parties to said agreement, or all of such constituent corporations except the one into which the other of such constituent corporations have been merged, as the case may be, shall cease and the constituent corporations shall become a new corporation, or be merged into one of such corporations, as the case may be, in accordance with the provisions of said agreement, possessing all the rights, privileges, powers and franchises as well of a public as of a private nature, and being subject to all the restrictions, disabilities and duties of each of such corporations so consolidated or merged, and all and singular, the rights, privileges, power and franchises of each of said corporations, and all property, real, personal and mixed, and all debts due to any of said constituent corporations on whatever account, as well for stock subscriptions as all other things in action or belonging to each of such corporations shall be vested in the corporation resulting from or surviving such consolidation or merger; and all property, rights, privileges, powers and franchises, and all and every other interest shall be thereafter as effectually the property of the several and respective constituent corporations, and the title to any real estate, whether vested by deed or otherwise, under the laws of this state, vested in any of such constituent corporations, shall not revert or be in any way impaired by reason of this statute; provided, however, that all rights of creditors and all liens upon any property of any of said constituent corporations shall be preserved unimpaired, and all debts, liabilities and duties of the respective constituent corporations shall thenceforth attach to said resulting or surviving corporation, and may be enforced against it to the same extent as if said debts, liabilities and duties had been incurred or contracted by it.

History: En. Sec. 4, Ch. 175, L. 1951.

or trademark owned by corporation on dissolution thereof. 30 ALR 2d 938.

Collateral References

Stockholders' rights to patent, copyright

15-1905. Rights of objecting stockholders—notice of merger. If any stockholder in any corporation of this state consolidating or merging as aforesaid, who objected thereto in writing, shall within twenty (20) days after the date on which the agreement of consolidation or merger has been filed in the office of the secretary of state, as aforesaid, demand in writing from the corporation resulting from or surviving such consolidation or merger payment of his stock, such resulting or surviving corporation shall, within three (3) months thereafter, pay to him the value of his stock as of the effective date of said consolidation or merger, exclusive of any element of value arising from the expectation or accomplishment of such consolidation or merger, but in no event less than the amount paid by such stockholder for his stock. Notice of the effective date of such merger shall be mailed by ordinary mail to each stockholder of any corporation so merged within five (5) days after said effective merger date. If within thirty (30) days after the date of such written demand the corporation and such stockholder fail to come to an agreement as to such value of such stock, each stockholder may demand an appraisal of his stock by three (3) disinterested persons, one (1) of whom shall be designated by the stockholder, one (1) by the directors of the resulting or surviving corporation and the other by the two (2) designated as aforesaid and such stockholder may serve written notice on such corporation designating therein one appraiser and requiring the corporation to designate a second appraiser within thirty (30) days from the date of service of such notice. If within thirty (30) days from the date of service of such notice the corporation shall have failed to designate a second appraiser or if the two (2) appraisers first designated shall fail to designate a third appraiser within thirty (30) days from the designation of the second appraiser, such stockholder may apply to the district court of the district in which the principal place of business of said corporation is located to designate a second and third appraiser, or a third appraiser, as the case may be. The decision of the appraisers as to such value of such stock shall be final and binding upon the corporation if the value so determined equals or exceeds the amount paid by such stockholder for such stock. In case the value of such stock as so fixed by the appraisers, or the amount paid for such stock by such stockholder whichever is the greater amount, is not paid to such stockholder within sixty (60) days from the date of such decision and of notice thereof given to the corporation, such amount may be collected as other debts are by law collectible from the resulting or surviving corporation. Upon receipt of payment in full for such stock, such stockholder shall transfer his stock to said resulting or surviving corporation, to be disposed of by the directors thereof, or to be retained for the benefit of the remaining stockholders.

History: En. Sec. 5, Ch. 175, L. 1951.

15-1906. Actions pending not affected. Any action or proceeding pending by or against any of the corporations consolidated or merged may be prosecuted to judgment, as if such consolidation or merger had not taken place or the corporation resulting from or surviving such consolidation or merger may be substituted in its place.

History: En. Sec. 6, Ch. 175, L. 1951.

15-1907. Prior mergers and consolidations validated. All mergers and consolidations and attempted mergers and consolidations in the accomplishment of which the provisions of this act have been substantially followed, are hereby validated and confirmed.

History: En. Sec. 7, Ch. 175, L. 1951.

15-1908. Other laws unaffected. This act shall not repeal, amend or modify in any respect, the provisions of sections 15-1603, 15-1801, 15-1802, 15-1803, 15-1804, 15-1805, 15-1806, or 15-1807.

History: En. Sec. 8, Ch. 175, L. 1951.

TITLE 16

COUNTIES

- Chapter 1. Definitions, courses and surveys, 16-101 to 16-112.
2. County boundaries, 16-201 to 16-263.
 3. Removal of county seats, 16-301 to 16-309.
 4. Location of county seats, 16-401 to 16-412.
 5. Creation of new counties by petition and election, 16-501 to 16-520.
 6. Transfer of records and actions on creation of new counties—jury lists, 16-601 to 16-626.
 7. Change of name of counties, 16-701 to 16-714.
 8. General powers and limitations upon counties, 16-801 to 16-812.
 9. County commissioners—organization—meetings—compensation, 16-901 to 16-912.
 10. General powers and duties of county commissioners, 16-1001 to 16-1035.
 11. Special powers and duties of county commissioners, 16-1101 to 16-1179.
 12. County printing—commissioners to contract for, 16-1201 to 16-1224.
 13. County farm bureaus, 16-1301 to 16-1303.
 14. County fairs, 16-1401 to 16-1414.
 15. County land advisory board, 16-1501 to 16-1509.
 16. Rural improvement districts, 16-1601 to 16-1632.
 17. Weed control, 16-1701 to 16-1723.
 18. Claims against counties, county warrants, 16-1801 to 16-1811.
 19. County budget system, 16-1901 to 16-1911.
 20. County finance—bonds and warrants, 16-2001 to 16-2050.
 21. Release of lien of county seed grain loans, 16-2101 to 16-2104.
 22. Tax levy for road and bridge construction, 16-2201 to 16-2204.
 23. Vote necessary on proposal to raise money, 16-2301 to 16-2306.
 24. County officers—qualifications—general provisions, 16-2401 to 16-2427.
 25. Consolidation of county offices, 16-2501 to 16-2507.
 26. County treasurer—duties as to warrants and other county finances, 16-2601 to 16-2626.
 27. Sheriff, 16-2701 to 16-2723.
 28. County jails, 16-2801 to 16-2823.
 29. County clerk, 16-2901 to 16-2925.
 30. Clerk of the district court, 16-3001 to 16-3005.
 31. County attorney, 16-3101 to 16-3105.
 32. County auditor, 16-3201 to 16-3212.
 33. County surveyor, 16-3301 to 16-3313.
 34. County coroner, 16-3401 to 16-3410.
 35. Public administrator—reference to law governing, 16-3501.
 36. Constable and justices of the peace, 16-3601 to 16-3606.
 37. Deputy county officers, 16-3701 to 16-3708.
 38. County charges, 16-3801 to 16-3804.
 39. County manager form of government, 16-3901 to 16-3923.
 40. Abandonment of counties, 16-4001 to 16-4023.
 41. County planning and zoning districts, 16-4101 to 16-4107.
 42. Mosquito control districts, 16-4201 to 16-4214.
 43. Public hospital districts, 16-4301 to 16-4313.

CHAPTER 1

DEFINITIONS, COURSES AND SURVEYS

- Section 16-101. County defined.
- 16-102. Courses deemed true.
 - 16-103. Directions deemed due.
 - 16-104. Meaning of terms.
 - 16-105. Same.
 - 16-106. Surveys to definitely establish unsettled boundaries.

- 16-107. Reports to governor on disagreement of commissioners.
- 16-108. Governor to determine boundary thereupon or to order new surveys.
- 16-109. Approved surveys to be conclusive.
- 16-110. Previous surveys validated—their force as evidence.
- 16-111. Apportionment of cost of survey—provision for payment thereof.
- 16-112. Collection of old taxes when county is divided or boundary altered.

16-101. (4293) County defined. A county is the largest political division of the state having corporate power.

History: En. Sec. 4100, Pol. C. 1895; re-en. Sec. 2781, Rev. C. 1907; re-en. Sec. 4293, R. C. M. 1921. Cal. Pol. C. Sec. 3901.

Cross-Reference

Consolidation with cities, secs. 11-3501 to 11-3560.

Limit of Powers

Prerogative or its synonym sovereignty means the inherent power of the people; it must involve the general interest of the state at large, and though the prerogative of the state may be invoked for the protection of the rights of a county, its agent or creature, the county, in the absence of express authority granting it, does not itself possess the power of the sovereign. *Bignell et al. v. Cummins*, 69 M 294, 298, 222 P 797.

Counties and school districts are subdivisions of the state government with fixed

powers and duties, and any act taken by the commissioners of the former or the trustees of the latter must be justified by the provisions of the statutes defining and limiting their powers. *State v. McGraw*, 74 M 152, 155, 240 P 812.

Counties are subdivisions of the state of purely statutory creation and when they assume to exercise a power, authority therefor must be found in the statute conferring it upon them or necessarily implied from the power expressly conferred; and wherever a power is conferred upon the board of county commissioners, but the mode in which the authority is to be exercised is not indicated, it may in its discretion select any appropriate mode or course of procedure. *State ex rel. Blair v. Kuhr*, 86 M 377, 283 P 758.

Collateral References

Counties⊖1.
20 C.J.S. Counties § 1.

16-102. (4294) Courses deemed true. In describing courses the words "north," "south," "east," and "west" mean true courses, and refer to the true meridian unless otherwise declared.

History: En. Sec. 4103, Pol. C. 1895; re-en. Sec. 2784, Rev. C. 1907; re-en. Sec. 4294, R. C. M. 1921. Cal. Pol. C. Sec. 3903.

Collateral References

Boundaries⊖6.
11 C.J.S. Boundaries § 9.

16-103. (4295) Directions deemed due. The words "northerly," "southerly," "easterly" and "westerly" mean due north, due south, due east, and due west, unless controlled by other words, or by lines, monuments, or natural objects.

History: En. Sec. 4104, Pol. C. 1895; re-en. Sec. 2785, Rev. C. 1907; re-en. Sec. 4295, R. C. M. 1921. Cal. Pol. C. Sec. 3904.

16-104. (4296) Meaning of terms. The words "to," "on," "along," "with," or "by" a mountain or ridge, mean summit-point, or summit-line, unless otherwise expressed.

History: En. Sec. 4105, Pol. C. 1895; re-en. Sec. 2786, Rev. C. 1907; re-en. Sec. 4296, R. C. M. 1921. Cal. Pol. C. Sec. 3905.

16-105. (4297) Same. The words "to," "by," "along," "with," "in," "up," or "down" a creek, river, slough, strait, or bay mean the middle of the main channel thereof, unless otherwise expressed.

History: En. Sec. 4106, Pol. C. 1895; re-en. Sec. 2787, Rev. C. 1907; re-en. Sec. 4297, R. C. M. 1921. Cal. Pol. C. Sec. 3906.

16-106. (4298) Surveys to definitely establish unsettled boundaries. All common boundaries and common corners of counties not adequately marked by natural objects or lines, or by surveys lawfully made, must be definitely established by surveys jointly made by the county surveyors of all the counties affected thereby, and approved by the boards of county commissioners of such counties.

History: En. Sec. 4150, Pol. C. 1895;
re-en. Sec. 2844, Rev. C. 1907; re-en. Sec.
4298, R. C. M. 1921. Cal. Pol. C. Sec. 3969.

Collateral References

Counties 8.
20 C.J.S. Counties §§ 18-20.
14 Am. Jur. 183, Counties.

16-107. (4299) Reports to governor on disagreement of commissioners. If the boards of county commissioners do not agree upon and finally approve the survey, each county surveyor must make a report to the governor, with surveys, maps, notes, and explanations touching disputed points.

History: En. Sec. 4151, Pol. C. 1895;
re-en. Sec. 2845, Rev. C. 1907; re-en. Sec.
4299, R. C. M. 1921. Cal. Pol. C. Sec. 3970.

16-108. (4300) Governor to determine boundary thereupon or to order new surveys. Upon such reports the governor must finally determine and establish the common boundaries and corners, if he can collate a satisfactory description therefrom. If the reports are insufficient for such purpose, he must cause surveys to be made, and when approved by him the surveys so made establish such common boundaries and corners.

History: En. Sec. 4152, Pol. C. 1895;
re-en. Sec. 2846, Rev. C. 1907; re-en. Sec.
4300, R. C. M. 1921. Cal. Pol. C. Sec. 3971.

16-109. (4301) Approved surveys to be conclusive. All surveys finally approved under the provisions of this chapter are conclusive ascertainment of lines and corners included therein.

History: En. Sec. 4153, Pol. C. 1895;
re-en. Sec. 2847, Rev. C. 1907; re-en. Sec.
4301, R. C. M. 1921. Cal. Pol. C. Sec. 3972.

16-110. (4302) Previous surveys validated—their force as evidence. All surveys and maps of boundary lines heretofore legally made and approved are declared valid and are prima facie evidence of the establishment of such lines, except so far as they are inconsistent with the provisions of this code.

History: En. Sec. 4154, Pol. C. 1895;
re-en. Sec. 2848, Rev. C. 1907; re-en. Sec.
4302, R. C. M. 1921. Cal. Pol. C. Sec. 3973.

16-111. (4303) Apportionment of cost of survey—provision for payment thereof. The cost of making such surveys must be apportioned equally among the counties interested, and the board of county commissioners must audit the same, and the amounts must be paid out of the general county fund.

History: En. Sec. 4155, Pol. C. 1895;
re-en. Sec. 2849, Rev. C. 1907; re-en. Sec.
4303, R. C. M. 1921. Cal. Pol. C. Sec. 3975.

16-112. (4304) Collection of old taxes when county is divided or boundary altered. When a county is divided or a boundary is altered, all taxes

levied before the division was made or boundary changed must be collected by the officers of and belong to the county in which the territory was situated before the division or change.

History: En. Sec. 4156, Pol. C. 1895; re-en. Sec. 2850, Rev. C. 1907; re-en. Sec. 4304, R. C. M. 1921. Cal. Pol. C. Sec. 3976.

Operation and Effect

Delinquent taxes paid on property incorporated in a new county, in the interim between the passing of the resolution by the board of commissioners of the parent county and the expiration of the ninety-day period after its filing with the secretary of state, belong to the parent and not to the new county. County of Hill v. County of Liberty, 62 M 15, 20, 203 P 500.

Id. Under section 16-511, providing for

the apportionment of property and debts between a new and the old county or counties out of which it is created, taxes upon property situated in that portion of the parent county or counties incorporated in the new county which are delinquent upon creation of the new one or were delinquent and remain unpaid for previous years, are collectible by and belong to the new county. (See Opinion on Motion for Rehearing.)

Collateral References

Counties \Leftrightarrow 16(1).

20 C.J.S. Counties § 35.

CHAPTER 2

COUNTY BOUNDARIES

- | | | |
|---------|---------|---|
| Section | 16-201. | Beaverhead county. |
| | 16-202. | Big Horn county. |
| | 16-203. | Blaine county. |
| | 16-204. | Broadwater county. |
| | 16-205. | Carbon county. |
| | 16-206. | Carter county. |
| | 16-207. | Cascade county. |
| | 16-208. | Chouteau county. |
| | 16-209. | Custer county. |
| | 16-210. | Daniels county. |
| | 16-211. | Dawson county. |
| | 16-212. | Deer Lodge county. |
| | 16-213. | Fallon county. |
| | 16-214. | Fergus county. |
| | 16-215. | Flathead county. |
| | 16-216. | Gallatin county. |
| | 16-217. | Garfield county. |
| | 16-218. | Glacier county. |
| | 16-219. | Golden Valley county. |
| | 16-220. | Granite county. |
| | 16-221. | Hill county. |
| | 16-222. | Jefferson county. |
| | 16-223. | Judith Basin county. |
| | 16-224. | Lake county. |
| | 16-225. | Lewis and Clark county. |
| | 16-226. | Liberty county. |
| | 16-227. | Lincoln county. |
| | 16-228. | Madison county. |
| | 16-229. | McCone county. |
| | 16-230. | Meagher county. |
| | 16-231. | Mineral county. |
| | 16-232. | Missoula county. |
| | 16-233. | Musselshell county. |
| | 16-234. | Park county. |
| | 16-235. | Petroleum county. |
| | 16-236. | Phillips county. |
| | 16-237. | Pondera county. |
| | 16-238. | Powder River county. |
| | 16-239. | Boundary line between Carter and Powder River counties established. |
| | 16-240. | Alteration of boundaries of Carter and Powder River counties. |

- 16-241. Powell county.
- 16-242. Prairie county.
- 16-243. Ravalli county.
- 16-244. Richland county.
- 16-245. Roosevelt county.
- 16-246. Rosebud county.
- 16-247. Sanders county.
- 16-248. Sheridan county.
- 16-249. Silver Bow county.
- 16-250. Stillwater county.
- 16-251. Sweet Grass county.
- 16-252. Teton county.
- 16-253. Change in boundary of Teton and Chouteau.
- 16-254. Toole county.
- 16-255. Treasure county.
- 16-256. Valley county.
- 16-257. Wheatland county.
- 16-258. Wibaux county.
- 16-259. Yellowstone county.
- 16-260. Boundary line between Yellowstone and Carbon counties established.
- 16-261. Alteration of boundaries of Yellowstone and Carbon counties.
- 16-262. Effect of act.
- 16-263. Township and range designations.

16-201. (4305) County boundaries. The boundaries of the several counties of the state of Montana are hereby fixed and defined, as follows:

Beaverhead County. Beginning at a point on the first standard parallel south at the northwest corner of section three (3), township six (6) south, range seven (7) west; thence south eighteen (18) miles to the northwest corner of section three (3), township nine (9) south, range seven (7), west; thence east six (6) miles, more or less, to the northeast corner of section four (4), township nine (9) south, range six (6) west; thence south six (6) miles more or less, to the northeast corner of section four (4), township ten (10) south, range six (6) west; thence east seven (7) miles, more or less, to the northeast corner of section three (3), township ten (10) south, range five (5) west; thence south six (6) miles, more or less, to the southeast corner of section thirty-four (34), township ten (10) south, range five (5) west; thence east to the northwest corner of section one (1), township eleven (11) south, range five (5) west; thence south six (6) miles, more or less, to the southeast corner of section thirty-five (35), township eleven (11) south, range five (5) west; thence east five (5) miles to the northeast corner of section three (3), township twelve (12) south, range four (4) west; thence south three (3) miles to the northeast corner of section twenty-two (22), township twelve (12) south, range four (4) west; thence east fourteen (14) miles, more or less, to the northeast corner of section twenty-four (24), township twelve (12) south, range two (2) west; thence south five (5) miles, more or less, to the northeast corner of section thirteen (13), township thirteen (13) south, range two (2) west; thence east sixteen (16) miles, more or less, following section lines to the point of intersection with the boundary lines between Montana and Idaho at the top of the divide of the main range of the Rocky mountains; thence in a general westerly and northwesterly direction along the top of said divide following the boundary line between the state of Montana and the state of Idaho, where the summit of the main range of the Bitter Root mountains joins said Continental divide; thence following in a general northeasterly direction along the top of said Con-

tinental divide to a point on said Continental divide nearest the head of the main drain of Pintler creek; thence along the middle of the channel of said Pintler creek in a southerly direction to a point in the center of the main channel of the Big Hole river directly opposite to the center of the outlet of said Pintler creek; thence following the center of the main channel of the Big Hole river in an easterly and southerly direction to the point where said middle channel of said Big Hole river intersects the west boundary of section thirty-two (32), township four (4) south, range seven (7) west; thence in a general southeasterly direction in a straight line to the southeast corner of section sixteen (16), township five (5) south, range seven (7) west; thence south to the southeast corner of section thirty-three (33), township five (5) south, range seven (7) west; said corner being a monument on the first standard parallel south; thence east along said standard parallel to the northeast corner of section four (4), township six (6) south, range seven (7) west; being the place of beginning. The county seat is Dillon, Montana.

History: County created Feb. 2, 1865, Bannack Stat., p. 529; boundaries established Dec. 10, 1867, L. 1867, p. 102; Sec. 3, Cod. Stat. 1871; territory added Feb. 7, 1874, L. 1874, p. 68; Sec. 325, 5th Div. Rev. Stat. 1879; Sec. 732, 5th Div. Comp. Stat. 1887; Sec. 4109, Pol. C. 1895; Sec. 2791, Rev. C. 1907; boundaries changed and part of Madison county added by Ch. 73, L. 1911; boundaries defined by Ch. 205, L. 1921; re-en. Sec. 4305, R. C. M. 1921.

Cross-Reference

New counties, description of boundaries included in session laws, sec. 82-2211.

Collateral References

Counties 67.

20 C.J.S. Counties § 14.

14 Am. Jur. 193, Counties, §§ 14 et seq.

Rights of political division to challenge acts or proceedings by which its boundaries or limits are affected. 86 ALR 1367.

16-202. (4306) Big Horn County. Beginning at a point where the township line between townships three (3) and four (4) north, range thirty-four (34) east, intersects the mid-channel of Big Horn river; thence west along said township line to the northwest corner of section six (6), township three (3) north, range thirty-three (33) east; thence south to the southwest corner of section nineteen (19), township three (3) north, range thirty-three (33) east; thence west to the northwest corner of section thirty (30), township three (3) north, range thirty-two (32) east; thence south to the northwest corner of section six (6), township two (2) north, range thirty-two (32) east; thence west to the northwest corner of section two (2), township two (2) north, range thirty-one (31) east; thence south to the northwest corner of section fourteen (14), township two (2) north, range thirty-one (31) east; thence west to the northwest corner of section sixteen (16), township two (2) north, range thirty-one (31) east; thence south to the northwest corner of section twenty-eight (28), township two (2) north, range thirty-one (31) east; thence west to the northwest corner of section thirty (30), township two (2) north, range thirty (30) east; thence south to the southwest corner of section thirty-one (31), township one (1) north, range thirty (30) east; thence west to the northwest corner of section six (6), township one (1) south, range thirty (30) east; thence south to the northwest corner of section six (6), township four (4) south, range thirty (30) east; thence west to the northwest corner of section six (6), township four (4) south, range twenty-nine (29) east; thence south to the southwest corner of section seven (7), township four (4) south, range twenty-nine (29) east; thence west to the

northeast corner of section thirteen (13), township four (4) south, range twenty-seven (27) east; thence south to the southeast corner of section twenty-four (24), township four (4) south, range twenty-seven (27) east; thence west to the southwest corner of section nineteen (19), township four (4) south, range twenty-seven (27) east; thence north to the northeast corner of section twenty-five (25), township four (4) south, range twenty-six (26) east; thence west along section lines to an intersection with the west boundary line of the Crow Indian reservation, in township four (4) south, range twenty-five (25) east; thence in a southwesterly direction along the boundary line of said Crow Indian reservation to the southwest corner of said reservation, in township seven (7) south, range twenty-five (25) east; thence east along the boundary line of the Crow Indian reservation to an intersection with the center of the channel of Big Horn river; thence southwesterly long the center of the channel of said Big Horn river to its intersection with the north boundary line of the state of Wyoming; thence east along the north boundary line of the state of Wyoming to an intersection with the line between ranges forty-four (44), and forty-five (45) east; thence north along the line between ranges forty-four (44), and forty-five (45), east, to the northeast corner of township eight (8) south, range forty-four (44) east; thence west along the south boundary line of township seven (7) south, ranges forty-four (44), forty-three (43), forty-two (42), and forty-one (41) east, to the northwest corner of township seven and one-half (7½) south, range forty-one (41) east; thence north to the northeast corner of township six (6) south, range forty (40) east; thence east to the southwest corner of township five (5) south, range forty-one (41) east; thence north to the northern line of the Northern Cheyenne Indian reservation, where the same intersects the east line of township two (2) south, range forty (40) east; thence west following the northern boundary line of the Northern Cheyenne Indian reservation to an intersection with the east line produced of section four (4), township two (2) south, range thirty-nine (39) east; thence north to the northeast corner of section four (4), township one (1) south, range thirty-nine (39) east; thence east to the southeast corner of section thirty-three (33), township one (1) north, range thirty-nine (39) east; thence north to the northeast corner of section twenty-one (21), township one (1) north, range thirty-nine (39) east; thence west to the northwest corner of section nineteen (19), township one (1) north, range thirty-nine (39) east; thence north to the northeast corner of section one (1), township one (1) north, range thirty-eight (38) east; thence west to the northwest corner of section six (6), township one (1) north, range thirty-eight (38) east; thence north to the northeast corner of section twenty-four (24), township two (2) north, range thirty-seven (37) east; thence west to the northwest corner of section nineteen (19), township two (2) north, range thirty-seven (37) east; thence north to the northeast corner of section one (1), township two (2) north, range thirty-six (36) east; thence west to the northwest corner of section six (6), township two (2) north, range thirty-five (35) east; thence north to the northeast corner of section one (1), township three (3) north, range thirty-four (34) east; thence west along the township line between townships three (3), and four (4) north,

range thirty-four (34) east, to the point of beginning. The county seat is Hardin, Montana.

History: County created Jan. 13, 1913, by petition and election, from portions of Yellowstone and Rosebud counties; boundary with Carbon and Yellowstone fixed

by Ch. 83, L. 1919; boundaries defined by Ch. 205, L. 1921; re-en. Sec. 4306, R. C. M. 1921.

16-203. (4307) Blaine County. Beginning at the closing corner common to sections three (3) and four (4), township thirty-seven (37) north, range seventeen (17) east, which is on the international boundary line between the United States and the Dominion of Canada; thence south on lines of public surveys to the southeast corner of section thirty-three (33), township thirty-seven (37) north, range seventeen (17) east; thence west along the ninth standard parallel north to the closing corner common to sections three (3) and four (4), township thirty-six (36) north, range seventeen (17) east; thence south about twenty-four (24) miles on a line dividing the east from the west half of townships thirty-three (33), thirty-four (34), thirty-five (35), and thirty-six (36) north, range seventeen (17) east; to the southeast corner of section thirty-three (33), township thirty-three (33) north, range seventeen (17) east; thence east on the eighth standard parallel north to the closing corner common to sections two (2) and three (3), township thirty-two (32) north, range seventeen (17) east; thence south about three (3) miles, following the section lines to the southwest corner of section fourteen (14), township thirty-two (32) north, range seventeen (17) east; thence east about one and one-half ($1\frac{1}{2}$) miles to the quarter corner between sections thirteen (13) and twenty-four (24), township thirty-two (32) north, range seventeen (17) east; thence south on the quarter section line about five (5) miles to the quarter corner between sections twelve (12) and thirteen (13), township thirty-one (31) north, range seventeen (17) east; thence west one and one-half ($1\frac{1}{2}$) miles to the northwest corner of section fourteen (14), township thirty-one (31) north, range seventeen (17) east; thence south four (4) miles to the southeast corner of section thirty-four (34), township thirty-one (31) north, range seventeen (17) east; thence west about one (1) mile to the southwest corner of said section thirty-four (34); thence south about seven (7) miles to the southwest corner of section three (3), township twenty-nine (29) north, range seventeen (17) east; thence west one and one-half ($1\frac{1}{2}$) miles to the quarter corner on the north boundary of section eight, township twenty-nine (29) north, range seventeen (17) east; thence south on the quarter section line about five (5) miles to the quarter corner on the south boundary of section thirty-two (32), township twenty-nine (29) north, range seventeen (17) east; thence east about one (1) mile to the northwest corner of section three (3), township twenty-eight (28) north, range seventeen (17) east; thence south on the section line to the southeast corner of section thirty-three (33), township twenty-five (25) north, range seventeen (17) east; thence west on the sixth standard parallel north to the closing corner common to sections three (3) and four (4), township twenty-four (24) north, range seventeen (17) east; thence south on the section line to the center of the main channel of the Missouri river; thence in an easterly direction along the middle of the main channel of the Missouri river to an intersection with a north

and south line through the center of township twenty-three (23) north, range twenty-two (22) east; thence north about eight (8) miles through the center of townships twenty-three (23) and twenty-four (24) north, range twenty-two (22) east, to a point where said line intersects the township line between townships twenty-four (24) and twenty-five (25) north; thence east about three-fourths ($\frac{3}{4}$) of a mile on said township line to a point where said township line intersects the north and south line through the center of township twenty-five (25) north, range twenty-two (22) east; thence northerly along said north and south line through the center of township twenty-five (25) north, range twenty-two (22) east, about three and one-half ($3\frac{1}{2}$) miles to a point where said line intersects the south boundary line, or said south boundary line produced, of the Fort Belknap Indian reservation; thence easterly along the south boundary line of said Fort Belknap Indian reservation about eleven and one-half ($11\frac{1}{2}$) miles to a point where the south boundary of said reservation intersects the west boundary of the Jefferson national forest; thence northerly about five (5) miles along said west boundary line of said Jefferson national forest to the northwest corner thereof; thence easterly about seven and one-half ($7\frac{1}{2}$) miles along the north boundary of said Jefferson national forest to a point where said boundary line, or the said boundary line produced intersects the range line between ranges twenty-five (25) and twenty-six (26) east; thence northerly about thirty-two (32) miles observing the offsets and corrections along the line between ranges twenty-five (25) and twenty-six (26) east, to a point where said line intersects the center of the channel of Milk river; thence easterly along the center of the channel of Milk river about six (6) miles to a point where the same intersects the section line between sections twenty-seven (27) and twenty-eight (28), township thirty-one (31) north, range twenty-six (26) east; thence north about ten (10) miles along the section line through the center of townships thirty-one (31) and thirty-two (32) north, range twenty-six (26) east, to a point where said line intersects the township line between townships thirty-two (32) and thirty-three (33) north; thence east about one (1) mile on said township line to a point where said township line intersects a north and south line through the center of township thirty-three (33) north, range twenty-six (26) east; thence north about twelve (12) miles through the center of townships thirty-three (33) and thirty-four (34) north, range twenty-six (26) east, to a point where said line intersects the township line between townships thirty-four (34) and thirty-five (35) north; thence east along said township line about three (3) miles to a point where the same intersects the range line between ranges twenty-six (26) and twenty-seven (27) east; thence north about eighteen (18) miles along said range line observing the offsets and corrections to a point where said range line joins the international boundary line between the United States and Canada; thence west along the international boundary line a distance of about fifty-seven (57) miles to the point of beginning. The county seat is Chinook, Montana.

History: County created by petition and election, effective Feb. 29, 1912, from portion of Chouteau county; portion de-

tached by creation of Phillips county, Feb. 5, 1915; boundaries defined by Ch. 205, L. 1921; re-en. Sec. 4307, R. C. M. 1921.

16-204. (4308) Broadwater County. Beginning at the intersection of the center of the channel of the Jefferson river, with the Montana principal meridian, and running thence down the middle of the Jefferson river to its mouth; thence down the middle of the Missouri river to the intersection with a curve line five hundred (500) feet southeasterly from the main line of the Chicago, Milwaukee & St. Paul railroad, where the same crosses the Missouri river; thence in a general northeasterly direction five hundred (500) feet distant from and parallel to the center line of the Chicago, Milwaukee & St. Paul railroad to the west line of section nine (9), township four (4) north, range three (3) east; thence north along said west line to a point therein five hundred (500) feet distant from, in a northerly direction—the center line of the said Chicago, Milwaukee & St. Paul railroad; thence in a general northeasterly direction parallel to and five hundred (500) feet distant from the center line of the Chicago, Milwaukee & St. Paul railroad to the west line of section three (3), township four (4) north, range three (3) east; thence north along the west boundary of section three (3), to the northwest corner thereof; thence east along the first standard parallel north to the southwest corner of section thirty-four (34), township five (5) north, range three (3) east; thence north along the section line to the west quarter corner of section fifteen (15), township five (5) north, range three (3) east; thence east along the half section line to the east quarter corner of section thirteen (13), township five (5) north, range four (4) east; thence north to what will be, when the same is surveyed, the west quarter corner of section eighteen (18), township five (5) north, range five (5) east; thence east through what will be, when the same is surveyed, the centers of sections eighteen (18), seventeen (17), sixteen (16), fifteen (15), and fourteen (14), township five (5) north, range five (5) east to the center of the main channel of Sixteen Mile creek; thence in a northwesterly direction following the summit of the Big Belt mountains to the head of Cave Gulch; thence in a southwesterly direction down Cave Gulch to its intersection with a north and south line one (1) mile east of the Montana principal meridian; thence south running parallel with and one (1) mile distant from the Montana principal meridian to the intersection with the middle of the main channel of the Missouri river; thence in a southeasterly direction following the middle of the main channel of the Missouri river to an intersection with a line extending due east from the north peak of the mountains southeast from Helena, known as Dry Gulch mountains; thence running due west to an intersection with the west line of township nine (9) north, range one (1) west; thence running south along the township line to the southwest corner of township four (4) north, range one (1) west; thence running east along the south line of said township to the Montana principal meridian; thence running south along said Montana principal meridian to the place of beginning. The county seat is Townsend, Montana.

History: County created Feb. 9, 1897; L. 1897, pp. 45-49, effective March 1, 1897; portion added to Lewis and Clark county, March 6, 1897, L. 1897, pp. 53-55; Secs. 2796, 2834, Rev. C. 1907; boundaries changed by Ch. 60, L. 1913; boundaries defined by Ch. 205, L. 1921; re-en. Sec. 4308, R. C. M. 1921.

16-205. (4309) Carbon County. Beginning at that point on the Yellowstone river where the west line of section twenty-one (21), township two (2) south, range twenty-four (24) east, intersects the said river, thence south along the west line of section twenty-one (21) and the west line of sections twenty-eight (28) and thirty-three (33), in said township to that point on the Clark Fork river where it is intersected by said line; thence in a southwesterly direction along the said Clark Fork river to that point thereon where it is intersected by the west line of section eight (8), township three (3) south, range twenty-four (24) east; thence south along the west line of said section eight (8), and the west line of sections seventeen (17), twenty (20), twenty-nine (29), and thirty-two (32) of said township to the southwest corner of section thirty-two (32), township three (3) south, range twenty-four (24) east; thence east along the south line of said township to the southeast corner thereof; thence south along the line between ranges twenty-four (24) and twenty-five (25) east to the southeast corner of section twenty-four (24), township four (4) south, range twenty-four (24) east; thence east along the north line of sections thirty (30) and twenty-nine (29), township four (4) south, range twenty-five (25) east to an intersection with the west boundary line of the Crow Indian reservation, township four (4) south, range twenty-five (25) east; thence in a southwesterly direction along the boundary line of said reservation to the southwest corner of said reservation in township seven (7) south, range twenty-five (25) east; thence east along the south boundary line of said reservation to an intersection with the center of the channel of the Big Horn river; thence southwesterly following the center of the channel of the Big Horn river to its intersection with the north boundary line of the state of Wyoming; thence west along the boundary line of the state of Wyoming to its intersection with the line between ranges fifteen (15) and sixteen (16) east; thence north along the lines between ranges fifteen (15) and sixteen (16) east to the southwest corner of township seven (7) south, range sixteen (16) east; thence east along the south line of township seven (7) south, range sixteen (16) east to a point which, when surveyed, will be the southeast corner of township seven (7) south, range sixteen (16) east; thence north along the east line of said township to the northeast corner thereof; thence east along the south line of township six (6) south, range seventeen (17) east, to the southeast corner of section thirty-four (34), township six (6) south, range seventeen (17) east; thence north along the east line of section thirty-four (34), twenty-seven (27) and twenty-two (22) to the northeast corner of section twenty-two (22), township six (6) south, range seventeen (17) east; thence east along the line between sections fourteen (14) and twenty-three (23), township six (6) south, range seventeen (17) east, to the southeast corner of section fourteen (14), township six (6) south, range seventeen (17) east; thence north along the east line of sections fourteen (14) and eleven (11), township six (6) south, range seventeen (17) east, to the northeast corner of section eleven (11), township six (6) south, range seventeen (17) east; thence east along the south line of section one (1), township six (6) south, range seventeen (17) east, to the southeast corner of said section one (1); thence north along the east line of township six (6) south,

range seventeen (17) east, to the northeast corner of section one (1); thence east along the first standard parallel south to the southeast corner of section thirty-six (36), township five (5) south, range seventeen (17) east; thence north along the east line of township five (5) south, range seventeen (17) east to the northeast corner of said section thirty-six (36), township five (5) south, range seventeen (17) east; thence east along the line between sections thirty (30) and thirty-one (31), township five (5) south, range eighteen (18) east, to the southeast corner of section thirty (30), township five (5) south, range eighteen (18) east; thence north along the east line of said section thirty (30) to the northeast corner thereof; thence east along the line between sections twenty (20) and twenty-nine (29), township five (5) south, range eighteen (18) east, to the southeast corner of said section twenty (20); thence north along the east line of said section twenty (20), to the northeast corner thereof; thence east along the line between sections sixteen (16) and twenty-one (21), township five (5) south, range eighteen (18) east, to the southeast corner of said section sixteen (16); thence north along the east line of said section sixteen (16), township five (5) south, range eighteen (18) east, to the northeast corner thereof; thence east along the line between sections ten (10) and fifteen (15), township five (5) south, range eighteen (18) east, to the southeast corner of said section ten (10); thence north along the east line of said section ten (10), to the northeast corner thereof; thence east along the south line of sections two (2) and one (1), township five (5) south, range eighteen (18) east, to the southeast corner of said section one (1); thence north along the east line of said section one (1) to the southwest corner of section thirty-one (31), township four (4) south, range nineteen (19) east; thence east along the south line of said section thirty-one (31), township four (4) south, range nineteen (19) east, to the southeast corner of said section; thence north along the east line of said section thirty-one (31), to the northeast corner thereof; thence east along the south line of sections twenty-nine (29), twenty-eight (28) and twenty-seven (27), township four (4) south, range nineteen (19) east, to the southeast corner of said section twenty-seven (27); thence north along the east line of said section twenty-seven (27), township four (4) south, range nineteen (19) east, to the northeast corner thereof; thence east along the south line of sections twenty-three (23) and twenty-four (24), township four (4) south, range nineteen (19) east, to the southeast corner of said section twenty-four (24); thence east along the south line of section nineteen (19), twenty (20), twenty-one (21), twenty-two (22), twenty-three (23) and twenty-four (24), township four (4) south, range twenty (20) east, to the southeast corner of said section twenty-four (24); thence north along the east line of said township to the northeast corner thereof; thence east along the south line of township three (3) south, range twenty-one (21) east, to the southeast corner of section thirty-three (33), township three (3) south, range twenty-one (21) east; thence north along the east line of section thirty-three (33), twenty-eight (28), twenty-one (21), sixteen (16) and nine (9), in said township and range, to an intersection with the center of the channel of the Yellowstone river; thence down the

center of the channel of the Yellowstone river to the place of beginning. The county seat is Red Lodge, Montana.

History: County created March 4, 1895; L. 1895, pp. 49-54, effective May 1, 1895; Sec. 4133, Pol. C. 1895; Sec. 2831, Rev. C. 1907; Stillwater county created, including part of, March 24, 1913; boundary line between Yellowstone and Carbon fixed by Ch. 75, L. 1919; boundary line with Big

Horn fixed by Ch. 83, L. 1919; boundaries defined by Ch. 205, L. 1921; re-en. Sec. 4309, R. C. M. 1921.

NOTE.—See Secs. 12-260 and 12-261, enacted by Ch. 30, Laws 1925, for changes in the boundary between Carbon county and Yellowstone county.

16-206. (4310) Carter County. Beginning at the northwest corner of township four (4) north, range fifty-five (55) east, and running east along the north boundary line of township four (4) north, to the northwest corner of section three (3), township four (4) north, range fifty-eight (58) east; thence south along the section line between sections three (3) and four (4), nine (9) and ten (10), fifteen (15) and sixteen (16), twenty-one (21) and twenty-two (22), twenty-seven (27) and twenty-eight (28), thirty-three (33) and thirty-four (34), to the northwest corner of section three (3) township three (3) north, range fifty-eight (58) east; thence east along the north line of township three (3) north to the northwest corner of section three (3), township three (3) north, range fifty-nine (59) east; thence south along the section line between sections three (3) and four (4), nine (9) and ten (10), fifteen (15) and sixteen (16), twenty-one (21) and twenty-two (22), twenty-seven (27) and twenty-eight (28), thirty-three (33) and thirty-four (34), to the northwest corner of section three (3), township two (2) north, range fifty-nine (59) east; thence east along the north line of township two (2) north to the northwest corner of section three (3), township two (2) north, range sixty-one (61) east; thence south along the section line between sections three (3) and four (4), nine (9) and ten (10), fifteen (15) and sixteen (16), twenty-one (21), and twenty-two (22), twenty-seven (27) and twenty-eight (28), thirty-three (33) and thirty-four (34), to the northwest corner of section three (3), township one (1) north, range sixty-one (61) east; thence east along the north line of township one (1) north, to the intersection of the eastern boundary line of the state of Montana; thence south along said eastern boundary line to the southeast corner of the state of Montana; thence west along the south boundary of the state of Montana to the southwest corner of township nine (9) south, range fifty-five (55) east; thence north along the range line between ranges fifty-four (54) and fifty-five (55), to the northwest corner of township six (6) south, range fifty-five (55) east; thence east along the north line of township six (6) south, to the southwest corner of township five (5) south, range fifty-five (55) east; thence north along the line between ranges fifty-four (54) and fifty-five (55), to the northwest corner of township one (1) south, range fifty-five (55) east; thence east along the north line of township one (1) south to the southwest corner of township one (1) north, range fifty-five (55) east; thence north along the line between ranges fifty-four (54) and fifty-five (55), to the northwest corner of township four (4) north, range fifty-five (55) east, being the point of beginning. The county seat is Ekalaka, Montana.

History: County created by Ch. 56, L. 1917, effective Feb. 22, 1917, out of portion of Fallon county; boundaries defined by Ch. 205, L. 1921; re-en. Sec. 4310, R. C. M. 1921. Ch. 45, L. 1929 amended the

boundaries between Carter and Powder River counties.

NOTE.—See also Secs. 16-239 and 16-240 establishing the boundary line between Powder River and Carter counties.

16-207. (4311) Cascade County. Beginning at the intersection of the center of the channel of the Missouri river with the north line of township twenty-two (22) north, range six (6) east; thence running west on the line between townships twenty-two (22) and twenty-three (23) north, to the northwest corner of township twenty-two (22) north, range one (1) east; thence south along the Montana principal meridian to the north line of township twenty-one (21) north; thence west along the north line of said township twenty-one (21) north to the northwest corner of township twenty-one (21) north, range two (2) west; thence south to the middle of the main channel of Sun river; thence westerly up the middle of the main channel of the Sun river to the Helena guide meridian; thence south along the Helena guide meridian to its intersection with the middle of the main channel of Dearborn river; thence down the middle of the main channel of Dearborn river to the north line of section twenty-four (24), township sixteen (16) north, range three (3) west; thence east along the north line of said section twenty-four (24) to the northwest corner of section nineteen (19), township sixteen (16) north, range two (2) west; thence east along the north line of section nineteen (19), township sixteen (16) north, range two (2) west to the northwest corner of section twenty (20); thence south along the section line to the southwest corner of section twenty (20), township sixteen (16) north, range two (2) west; thence east to the southeast corner of section twenty (20); thence north to the east quarter corner of section twenty (20); thence running east on the midsection lines to the east quarter corner on the east line of section twenty-four (24), township sixteen (16) range two (2) west; thence running south to the southwest corner of township fourteen (14) north, range one (1) west; thence running east to the southeast corner of township fourteen (14) north, range one (1) east; thence north to the southeast corner of township fifteen (15) north, range one (1) east; thence east to the southeast corner of township fifteen (15) north, range four (4) east; thence north to the southwest corner of township sixteen (16) north, range five (5) east; thence east along the line dividing townships fifteen (15) and sixteen (16) north, to the summit of the Little Belt mountains; thence following the summit of the Little Belt mountains in a southeasterly direction to an intersection with a line dividing ranges eight (8) and nine (9) east; thence running north along said line to the northeast corner of township fifteen (15) north, range eight (8) east; thence running west to the southwest corner of township sixteen (16) north, range eight (8) east; thence north along the range line between ranges seven (7) and eight (8) east, as corrected by the United States government survey thereof to the quarter ($\frac{1}{4}$) corner on the east boundary of section thirteen (13), township seventeen (17) north, range seven (7) east; thence west one-half ($\frac{1}{2}$) mile to the center of said section thirteen (13); thence north one (1) mile to the center of section twelve (12), township seventeen (17) north, range seven (7) east; thence west one-half ($\frac{1}{2}$) mile to the quarter ($\frac{1}{4}$) corner on the west boundary of said section twelve (12); thence north

along section lines a distance of four (4) miles to the quarter ($\frac{1}{4}$) corner on the west boundary of section twenty-four (24), township eighteen (18) north, range seven (7) east; thence east a distance of three-fourths ($\frac{3}{4}$) of a mile to the northeast corner of the northwest quarter of the southeast quarter ($NW\frac{1}{4}SE\frac{1}{4}$) of said section twenty-four (24); thence south a distance of three-fourths ($\frac{3}{4}$) of a mile to the southwest corner of the northeast quarter of the northeast quarter ($NE\frac{1}{4}NE\frac{1}{4}$) of section twenty-five (25), township eighteen (18) north, range seven (7) east; thence east a distance of one-fourth ($\frac{1}{4}$) of a mile to the southeast corner of the northeast quarter of the northeast quarter ($NE\frac{1}{4}NE\frac{1}{4}$) of said section twenty-five (25); thence north along the range line between ranges seven (7) and eight (8) east a distance of four and one-fourth ($4\frac{1}{4}$) miles, more or less, to the northwest corner of township eighteen (18) north, range eight (8) east; thence east along the township lines between townships eighteen (18) and nineteen (19) north, to the northeast corner of said township eighteen (18) north, range eight (8) east; thence north along the range line between ranges eight (8) and nine (9) east to the northeast corner of township nineteen (19) north, range eight (8) east; thence west along the township line to the northwest corner of said township nineteen (19) north, range eight (8) east; thence north to the northeast corner of township twenty (20) north, range seven (7) east; thence west along the fifth standard parallel north to a point in the middle of the main channel of Belt creek; thence in a northwesterly direction following the main channel of Belt creek to the middle of the main channel of the Missouri river; thence along the main channel of the Missouri river to the place of beginning. The county seat is Great Falls, Montana.

History: County created Sept. 12, 1887, Ex. L. 1887, p. 104, effective third Monday of Dec. 1887; Sec. 4122, Pol. C. 1895; boundaries extended March 1, 1897, L. 1897, pp. 50-52; portion added to Lewis and Clark, March 6, 1897, L. 1897, pp. 53-55; portion of Fergus county added Feb. 28, 1899, L. 1899, p. 41; portion of Meagh-

er county added, March 6, 1899, L. 1899, p. 43; portion of Chouteau county added March 3, 1903, Ch. 51, L. 1903; Secs. 2796, 2813, 2814, 2815, 2817, 2818, Rev. C. 1907; Judith Basin county created from portion of, Dec. 10, 1920; boundaries defined by Ch. 205, L. 1921; re-en. Sec. 4311, R. C. M. 1921; amd. Sec. 1, Ch. 58, L. 1941.

16-208. (4312) Chouteau County. Beginning at the center of the channel of the Missouri river opposite the mouth of Arrow creek; thence following up the center of Arrow creek to an intersection with the north line of section fifteen (15), township nineteen (19) north, range twelve (12) east; thence running west along the north line of sections fifteen (15), sixteen (16), seventeen (17) and eighteen (18), township nineteen (19) north, range twelve (12) east, and the north line of sections thirteen (13), fourteen (14), fifteen (15), sixteen (16), seventeen (17) and eighteen (18), township nineteen (19) north, range eleven (11) east, to the northwest corner of said section eighteen (18); thence running west along the south line of sections twelve (12), eleven (11), ten (10), nine (9), eight (8) and seven (7), township nineteen (19) north, ranges ten (10) and nine (9) east, to the southwest corner of section seven (7), township nineteen (19) north, range nine (9) east; thence running north to the northeast corner of township nineteen (19) north, range eight (8) east; thence running west along the line between townships nineteen (19) and twenty (20) north to the southeast corner of township twenty (20) north, range

seven (7) east; thence running north to the northeast corner of said township; thence west along the fifth standard parallel north, to a point in the middle of the main channel of Belt creek; thence in a northwesterly direction following the main channel of Belt creek to the middle of the main channel of the Missouri river; thence along the main channel of the Missouri river to an intersection with the north line of township twenty-two (22) north, range six (6) east; thence running west along the line between townships twenty-two (22) and twenty-three (23) north, to its intersection with the Montana principal meridian; thence running north along the Montana principal meridian to the southwest corner of section nineteen (19), township twenty-six (26) north, range one (1) east; thence east along the section line to the southeast corner of section twenty-four (24), township twenty-six (26) north, range two (2) east; thence north along the line between ranges two (2) and three (3) east, to the northwest corner of township twenty-seven (27) north, range three (3) east; thence running east along the line between townships twenty-seven (27) and twenty-eight (28) north, to the southeast corner of section thirty-three (33), township twenty-eight (28) north, range seven (7) east; thence running north along the line dividing the east from the west half of said township to the northwest corner of section three (3), township twenty-eight (28) north, range seven (7) east; thence running east along the line between townships twenty-eight (28) and twenty-nine (29) north to the southeast corner of township twenty-nine (29) north, range eight (8) east; thence running north to the northwest corner of township twenty-nine (29) north, range nine (9) east; thence running east on the line between townships twenty-nine (29) and thirty (30) north, to the northeast corner of township twenty-nine (29) north, range fourteen (14) east; thence running south along the line between ranges fourteen (14) and fifteen (15) east, to the southwest corner of township twenty-nine (29) north, range fifteen (15) east; thence running east along the seventh standard parallel north to the northeast corner of township twenty-eight (28) north, range fifteen (15) east; thence running south along the east line of said township to the southeast corner thereof; thence running east on the line dividing townships twenty-seven (27) and twenty-eight (28) north to the northeast corner of section four (4), township twenty-seven (27) north, range seventeen (17) east; thence south along the line dividing the west from the east half of townships twenty-seven (27), twenty-six (26) and twenty-five (25) north, range seventeen (17) east, to the southeast corner of section thirty-three (33) township twenty-five (25) north, range seventeen (17) east; thence west on the sixth standard parallel north to the closing corner common to sections three (3) and four (4), township twenty-four (24) north, range seventeen (17) east; thence south on the line dividing the east from the west half of townships twenty-four (24) and twenty-three (23) north, range seventeen (17) east to the center of the main channel of the Missouri river; thence in a westerly direction following the center of said channel to the place of beginning. The county seat is Fort Benton, Montana.

History: County created Feb. 2, 1865, 1876, L. 1876, p. 47; Sec. 331, 5th Div. Rev. Bannack Stat., p. 531; Sec. 9, Cod. Stat. Stat. 1879; Sec. 738, 5th Div. Comp. Stat. 1871, pp. 431-2; territory added Feb. 5, 1887; Cascade county created, including

part of Chouteau, Sept. 12, 1887, Ex. L. 1887, pp. 104-109; Teton created, including part of Chouteau, Feb. 7, 1893, L. 1893, pp. 205-209; Secs. 4115, 4124, 4128, Pol. C. 1895; portion added to Cascade county March 1, 1897, L. 1897, pp. 50-2; portion added to Cascade county March 3, 1903, L. 1903, Ch. 51; spelling of name changed to Chouteau by Ch. 74, L. 1903; boundaries of Fergus county extended, Ch. 28, L. 1907; Secs. 2802, 2803, 2819, 2821 and 2826, Rev. C. 1907; Hill county created, includ-

ing part of Chouteau, Feb. 28, 1912; Blaine county created, including part of Chouteau, Feb. 29, 1912; Pondera county created, April 1, 1919, from part of, by Ch. 22, L. 1919; Liberty county created Feb. 11, 1920, from part of; boundaries defined by Ch. 205, L. 1921; boundary between Chouteau and Teton changed and portion added to Teton by Ch. 174, L. 1921, effective March 5, 1921; re-en. Sec. 4312, R. C. M. 1921.

See Sec. 16-253.

16-209. (4313) Custer County. Beginning at the northwest corner of section nineteen (19), township ten (10) north, range fifty-six (56) east; thence running at right angles due west along the north line of sections twenty-four (24), twenty-three (23), twenty-two (22), twenty-one (21), twenty (20), nineteen (19), township ten (10) north, range fifty-five (55) east, to the northwest corner of section nineteen (19), township ten (10) north, range fifty-five (55) east; thence running at right angles due south to the southwest corner of township ten (10) north, range fifty-five (55) east; thence running due west along the south line of township ten (10) north, range fifty-four (54) east to the northwest corner of township nine (9) north, range fifty-four (54) east; thence due south two (2) miles to the southeast corner of section twelve (12), township nine (9) north, range fifty-three (53) east; thence due west along section lines to the southwest corner of section seven (7), township nine (9) north, range fifty-two (52) east; thence due north along the lines between ranges fifty-one (51) and fifty-two (52), to the southeast corner of township ten (10) north, range fifty-one (51) east; thence due west along the north line of township nine (9) north, to the southwest corner of section thirty-three (33), township ten (10) north, range fifty (50) east; thence at right angles due north two (2) miles to the northeast corner of section twenty-nine (29), township ten (10) north, range fifty (50) east; thence at right angles due west to the northwest corner of section thirty (30), township ten (10) north, range fifty (50) east; thence along the line between ranges forty-nine (49) and fifty (50), to the northeast corner of township ten (10) north, range forty-nine (49) east; thence at right angles due west to the northwest corner of section four (4), township ten (10) north, range forty-nine (49) east; thence north to the northwest corner of section four (4), township eleven (11) north, range forty-nine (49) east; thence west to the southwest corner of township twelve (12) north, range forty-nine (49) east; thence north to the northwest corner of township twelve (12) north, range forty-nine (49) east; thence west to the southwest corner of township thirteen (13) north, range forty-seven (47) east; thence north along the west line of township thirteen (13) north, range forty-seven (47) east, to the northeast corner of section twenty-five (25), township thirteen (13) north, range forty-six (46) east; thence west along the section line to the southwest corner of section nineteen (19), township thirteen (13) north, range forty-five (45) east; thence south to the southeast corner of township thirteen (13) north, range forty-four (44) east; thence west to the northwest corner of township twelve (12) north, range forty-five (45) east; thence south to the southwest corner of township nine (9) north,

range forty-five (45) east; thence west to the northwest corner of township eight (8) north, range forty-five (45) east; thence south to the southwest corner of township five (5) north, range forty-five (45) east; thence west to the northwest corner of township four (4) north, range forty-five (45) east; thence south to the southwest corner of township one (1) north, range forty-five (45) east; thence east along the line between township one (1) north and one (1) south to the southeast corner of township one (1) north, range fifty-four (54) east; thence north to the northeast corner of township four (4) north, range fifty-four (54) east; thence east to the southwest corner of section thirty-one (31), township five (5) north, range fifty-five (55) east; thence north along the line between ranges fifty-four (54) and fifty-five (55) east to the northwest corner of township six (6) north, range fifty-five (55) east; thence west along the line between townships six (6) north and seven (7) north to the southwest corner of township seven (7) north, range fifty-five (55) east; thence north along the line between ranges fifty-four (54) and fifty-five (55) east, to the northwest corner of township eight (8) north, range fifty-five (55) east; thence east along the second standard parallel north to the southwest corner of township nine (9) north, range fifty-six (56) east; thence north along the line between ranges fifty-five (55) and fifty-six (56) east, to the place of beginning. The county seat is Miles City, Montana.

History: County created under name of Big Horn, Feb. 2, 1865, Bannack Stat., p. 531; Dawson county created out of, Jan. 15, 1869, L. 1869, p. 102; Sec. 11, p. 432, Cod. Stat. 1871; name changed to Custer, Feb. 16, 1877, L. 1877, p. 425; Sec. 333, 5th Div. Rev. Stat. 1879; boundary changed March 8, 1883, L. 1883, p. 99; Yellowstone created from part of, Feb. 26, 1883, L. 1883, pp. 119-122; Sec. 740, 5th Div. Comp. Stat. 1887; Sec. 4117, Pol. C. 1895; Crow Indian reservation W. of Big Horn river

added to Yellowstone, March 5, 1897, L. 1897, p. 55; Rosebud county created out of, Feb. 11, 1901, L. 1901, pp. 97-101; Secs. 2805, 2809, 2840, Rev. C. 1907; Fallon county created out of, Dec. 9, 1913; Prairie county created, including part of, Feb. 5, 1915; part added to Prairie by Ch. 139, L. 1917; Powder River county created out of part of by Ch. 141, L. 1919, effective April 1, 1919; boundaries defined by Ch. 205, L. 1921; re-en. Sec. 4313, R. C. M. 1921.

16-210. (4314) Daniels County. Commencing at the intersection of the range line between ranges forty-two (42) and forty-three (43) east with the international boundary line between the United States and the Dominion of Canada; thence east along said boundary line a distance of about forty-eight (48) miles to the point where the range line between ranges fifty (50) and fifty-one (51) east intersects said international boundary line; thence south on said range line between ranges fifty (50) and fifty-one (51) east, a distance of about six (6) miles to the southeast corner of township thirty-seven (37) north, range fifty (50) east; thence east on the township line between townships thirty-seven (37) and thirty-six (36) north, range fifty-one (51) east, a distance of one (1) mile, more or less, to the line between sections three (3) and four (4), township thirty-six (36) north, range fifty-one (51) east; thence directly south on the section line a distance of about eighteen (18) miles to the southeast corner of section thirty-three (33), township thirty-four (34) north, range fifty-one (51) east; thence east to the township line between townships thirty-three (33) and thirty-four (34) north, range fifty-one (51) east, for a distance of three (3) miles, more or less, to the northeast corner of township thirty-three (33) north, range fifty-one (51) east; thence south on

the line between ranges fifty-one (51) and fifty-two (52) east, a distance of six (6) miles to the southeast corner of township thirty-three (33) north, range fifty-one (51) east; thence west on the township line between townships thirty-two (32) and thirty-three (33), a distance of forty-eight (48) miles to the southwest corner of township thirty-three (33) north, range forty-four (44) east; thence north on the range line between ranges forty-three (43) and forty-four (44), a distance of eighteen (18) miles to the southeast corner of township thirty-six (36) north, range forty-three (43) east; thence west a distance of six (6) miles on the township line between townships thirty-five (35) and thirty-six (36) north, to the southwest corner of township thirty-six (36) north, range forty-three (43) east; thence north along the range line between ranges forty-two (42) and forty-three (43) east, a distance of six (6) miles, more or less, to the township line between township thirty-six (36) and thirty-seven (37) north; thence east along said township line two (2) miles, more or less, to the southeast corner of township thirty-seven (37) north, range forty-two (42) east; thence north on the range line between ranges forty-two (42) and forty-three (43) east six miles, more or less, to the place of beginning. The county seat is Scobey, Montana.

History: County created by petition and election, effective Aug. 30, 1920, from portions of Sheridan and Valley; bounda-

ries defined by Ch. 205, L. 1921; re-en. Sec. 4314, R. C. M. 1921.

16-211. (4315) Dawson County. Beginning at the point of intersection of the center of the channel of the Yellowstone river with a line drawn east and west through the center of section fifteen (15) of township eighteen (18) north, range fifty-seven (57) east; thence east through the center of said section to a point of intersection with the east line of said section; thence south one-half ($\frac{1}{2}$) mile along the east line of said section fifteen (15), township eighteen (18) north, range fifty-seven (57) east, to the southeast corner of said section; thence east one-half ($\frac{1}{2}$) mile along the south line of section fourteen (14), township eighteen (18) north, range fifty-seven (57) east; thence south one-half ($\frac{1}{2}$) mile to the center of section twenty-three (23) township eighteen (18) north, range fifty-seven (57) east; thence east one-half ($\frac{1}{2}$) mile to a point of intersection with the east line of said section twenty-three (23); thence south one-half ($\frac{1}{2}$) mile along the east line of said section twenty-three (23) to the southeast corner of said section twenty-three (23); thence east one-half ($\frac{1}{2}$) mile along the south line of section twenty-four (24), township eighteen (18) north, range fifty-seven (57) east; thence south one-half ($\frac{1}{2}$) mile to the center of section twenty-five (25), township eighteen (18) north, range fifty-seven (57) east; thence one-half ($\frac{1}{2}$) mile east to the east line of said section twenty-five (25); thence south one (1) mile along the west line of sections thirty (30) and thirty-one (31), township eighteen (18) north, range fifty-eight (58) east; thence east one-half ($\frac{1}{2}$) mile to the center of section thirty-one (31), township eighteen (18) north, range fifty-eight (58) east; thence south one (1) mile to the center of section six (6), township seventeen (17) north, range fifty-eight (58) east; thence east one-half ($\frac{1}{2}$) mile to the east line of section six (6); thence south one-half ($\frac{1}{2}$) mile along the east line of said section six (6); thence

east one-half ($\frac{1}{2}$) mile along the south line of section five (5), township seventeen (17) north, range fifty-eight (58) east; thence south one-half ($\frac{1}{2}$) mile to the center of section eight (8), township seventeen (17) north, range fifty-eight (58) east; thence east one-half ($\frac{1}{2}$) mile to the east line of said section eight (8); thence south two (2) miles along the east line of sections eight (8), seventeen (17) and twenty (20), all in township seventeen (17) north, range fifty-eight (58) east; thence east one-half ($\frac{1}{2}$) mile to the center of section twenty-one (21), township seventeen (17) north, range fifty-eight (58) east; thence south one (1) and one-half ($\frac{1}{2}$) miles through the center of section twenty-eight (28), township seventeen (17) north, range fifty-eight (58) east, to the south line of said section twenty-eight (28); thence east one-half ($\frac{1}{2}$) mile along the south line of section twenty-eight (28), township seventeen (17) north, range fifty-eight (58) east to the southeast corner of said section twenty-eight (28); thence south one (1) mile along the east line of section thirty-three (33), township seventeen (17) north, range fifty-eight (58) east to the southeast corner of said section thirty-three (33); thence east and along the north line of section one (1), township sixteen (16) north, range fifty-eight (58) east, to the quarter corner on the north line of the said section one (1); thence south three (3) miles through the centers of sections one (1), twelve (12) and thirteen (13), all in township sixteen (16) north, range fifty-eight (58) east, to the south line of said section thirteen (13); thence east one-half ($\frac{1}{2}$) mile along the south line of said section thirteen (13), township sixteen (16) north, range fifty-eight (58) east, to the southeast corner of said section thirteen (13); thence south six and one-half ($6\frac{1}{2}$) miles along the range line between ranges fifty-eight (58) and fifty-nine (59), to the quarter corner of the east line of section twenty-four (24), township fifteen (15) north, range fifty-eight (58) east; thence west one (1) mile through the center of said section twenty-four (24) to the west line of said section twenty-four (24); thence south two and one-half ($2\frac{1}{2}$) miles along the east line of sections twenty-three (23), twenty-six (26) and thirty-five (35), all in township fifteen (15) north, range fifty-eight (58) east, to the southeast corner of said section thirty-five (35); thence west and along the township line one-half ($\frac{1}{2}$) mile to the quarter corner on the north line of section two (2), township fourteen (14) north, range fifty-eight (58) east; thence south one mile through the center of said section two (2) to the south line of said section two (2); thence west along the south line of said section two (2) one-half ($\frac{1}{2}$) mile to the southwest corner of said section two (2); thence south one (1) mile and along the east line of section ten (10), township fourteen (14) north, range fifty-eight (58) east, to the southeast corner of said section ten (10); thence west one-half ($\frac{1}{2}$) mile and along the south line of said section ten (10), to the quarter corner on the south line of said section ten (10); thence south one (1) mile through the center of section fifteen (15), township fourteen (14) north, range fifty-eight (58) east, to the south line of the said section fifteen (15); thence west one-half ($\frac{1}{2}$) mile and along the south line of said section fifteen (15), township fourteen (14) north, range fifty-eight (58) east, to the southwest corner of said section fifteen (15); thence south one (1) mile

along the west line of section twenty-two (22) of township fourteen (14) north, range fifty-eight (58) east, to the southeast corner of section twenty-one (21), township fourteen (14) north, range fifty-eight (58) east; thence west one-half ($\frac{1}{2}$) mile along the south line of said section twenty-one (21); thence south one-half ($\frac{1}{2}$) mile to the center of section twenty-eight (28), township fourteen (14) north, range fifty-eight (58) east; thence west one-half ($\frac{1}{2}$) mile to the west line of section twenty-eight (28), township fourteen (14) north, range fifty-eight (58) east; thence south one-half ($\frac{1}{2}$) mile along the west line of said section twenty-eight (28), to the southwest corner of said section twenty-eight (28); thence west one-half ($\frac{1}{2}$) mile and along the north line of section thirty-two (32), township fourteen (14) north, range fifty-eight (58) east, to the quarter corner on the north line of said section thirty-two; thence south one (1) mile through the center of said section thirty-two (32), township fourteen (14) north, range fifty-eight (58) east, to the south line of said section thirty-two (32); thence west one-half ($\frac{1}{2}$) mile and along the south line of said section thirty-two (32), to the southwest corner of said section thirty-two (32); thence south one (1) mile and along the east line of section six (6), township thirteen (13) north, range fifty-eight (58) east, to the southeast corner of said section six (6); thence west one (1) mile and along the south line of section six (6), to the southwest corner of the said section six (6); thence south one (1) mile and along the east line of section twelve (12), township thirteen (13) north, range fifty-seven (57) east, to the southeast corner of said section twelve (12); thence west one (1) mile and along the south line of said section twelve (12), to the southwest corner of said section twelve (12); thence south one-half ($\frac{1}{2}$) mile and along the east line of section fourteen (14), township thirteen (13) north, range fifty-seven (57) east, to the quarter corner on the east line of the said section fourteen (14); thence west one-half ($\frac{1}{2}$) mile to the center of the said section fourteen (14); thence south one-half ($\frac{1}{2}$) mile to a point of intersection with the south line of said section fourteen (14); thence at right angles west one (1) mile along the south line of sections fourteen (14) and fifteen (15), all in township thirteen (13) north, range fifty-seven (57) east, to the quarter corner on the south line of said section fifteen (15); thence south one-half ($\frac{1}{2}$) mile to the center of section twenty-two (22), township thirteen (13) north, range fifty-seven (57) east; thence west one-half ($\frac{1}{2}$) mile to a point on the west line of said section twenty-two (22); thence south one-half ($\frac{1}{2}$) mile along the west line of the said section twenty-two (22), township thirteen (13) north, range fifty-seven (57) east, to the southwest corner of said section twenty-two (22); thence west along the south line of sections twenty-one (21), twenty (20) and nineteen (19), township thirteen (13) north, range fifty-seven (57) east, and along the north line of sections twenty-five (25), twenty-six (26), twenty-seven (27), twenty-eight (28), twenty-nine (29) and thirty (30), township thirteen (13) north, range fifty-six (56) east and along the north line of sections twenty-five (25), twenty-six (26), twenty-seven (27), twenty-eight (28), twenty-nine (29) and thirty (30), township thirteen (13) north, range fifty-five (55) east, and along the north line of sections twenty-five (25), twenty-six (26), twenty-seven (27), twenty-

eight (28), twenty-nine (29) and thirty (30) of township thirteen (13) north, range fifty-four (54) east, and along the north line of sections twenty-five (25), twenty-six (26), twenty-seven (27) and twenty-eight (28) of township thirteen (13) north, range fifty-three (53) east, to the southwest corner of section twenty-one (21) of said township and range; thence north along section lines to the northeast corner of section seventeen (17), township thirteen (13) north, range fifty-three (53) east; thence west one (1) mile to the southwest corner of section eight (8), township thirteen (13) north, range fifty-three (53) east; thence north one (1) mile to the southeast corner of section six (6), township thirteen (13) north, range fifty-three (53) east; thence west one (1) mile to the southwest corner of said section six (6); thence north one (1) mile to the northeast corner of township thirteen (13) north, range fifty-two (52) east; thence west along the north line of township thirteen (13) north to the southeast corner of township fourteen (14) north, range fifty-one (51) east; thence running north to the northeast corner of section thirteen (13) of said township and range; thence running west to the southwest corner of section seven (7), township fourteen (14) north, range fifty-one (51) east; thence running north along the range line between ranges fifty (50) and fifty-one (51) east to the northeast corner of township sixteen (16) north, range fifty (50) east; thence running west along the fourth standard parallel north to the southeast corner of township seventeen (17) north, range forty-nine (49) east; thence north along the range line between ranges forty-nine (49) and fifty (50) east, to the northwest corner of township twenty (20) north, range fifty (50) east; thence east along the north line of township twenty (20) north, to the southeast corner of township twenty-one (21) north, range forty-nine (49) east; thence north along the line between ranges forty-nine (49) and fifty (50) east, to the northwest corner of township twenty-three (23) north, range fifty (50) east; thence east along the north line of township twenty-three (23) north, to the southeast corner of township twenty-four (24) north, range fifty (50) east; thence south on the line between ranges fifty (50) and fifty-one (51) east, to the southwest corner of township twenty-three (23) north, range fifty-one (51) east; thence east along the south line of township twenty-three (23) north, ranges fifty-one (51) and fifty-two (52) east, to the northwest corner of township twenty-two (22) north, range fifty-three (53) east; thence south along the line between ranges fifty-two (52) and fifty-three (53) east, to the southwest corner of township twenty-two (22) north, range fifty-three (53) east; thence east along the line between townships twenty-one (21) and twenty-two (22) north, to the northwest corner of township twenty-one (21) north, range fifty-six (56) east; thence south on the line between ranges fifty-five (55) and fifty-six (56) east, to the southwest corner of said township twenty-one (21) north, range fifty-six (56) east; thence east along the line between townships twenty (20) and twenty-one (21) north, to the northwest corner of township twenty (20) north, range fifty-seven (57) east; thence south along the line between ranges fifty-six (56) and fifty-seven (57) east, to the southwest corner of township nineteen (19) north, range fifty-seven (57) east; thence east along the line between townships eighteen (18) and nineteen

(19) north, to an intersection with the center of the channel of the Yellowstone river; thence in a southwesterly direction following the center of the channel of the Yellowstone river to the place of beginning. The county seat is Glendive, Montana.

History: County created Jan. 15, 1869, L. 1868-69, p. 102; Cod. Stat. 1871, Sec. 10, p. 432; 5th Div. Rev. Stat. 1879, Sec. 332; southern boundary changed March 8, 1883, L. 1883, p. 99; Sec. 739, 5th Div. Comp. Stat. 1887; Sec. 4116, Pol. C. 1895; Sec. 2804, Rev. C. 1907; Valley county detached Feb. 6, 1893 (p. 202, L. 1893); Sec. 4125, Pol. C. 1895; Sec. 2823, Rev. C. 1907; Richland county detached May 27, 1914; Wibaux county created Aug. 17, 1914, part

of Dawson; Prairie county created Feb. 5, 1915, part of Dawson; boundary between Dawson and Rosebud changed by Ch. 36, L. 1917; Garfield county created by Ch. 4, L. 1919, effective April 1, 1919, from part of Dawson; McCone county created by Ch. 33, L. 1919, effective April 1, 1919, from part of Dawson; boundaries defined by Ch. 205, L. 1921; re-en. Sec. 4315, R. C. M. 1921.

16-212. (4316) Deer Lodge County. Beginning at a point where the line of the divide between the headwaters of Brown's gulch and Dry Cottonwood creek intersects the continental divide which is approximately the quarter corner on the east boundary of section twenty-three (23), township five (5) north, range eight (8) west; running thence southwesterly along said divide between the headwaters of Brown's gulch and Dry Cottonwood creek to an intersection with the first standard parallel north which is the southwest corner of section thirty-six (36), township five (5) north, range nine (9) west; thence running west along said standard parallel to the point where the same intersects the Deer Lodge guide meridian; thence south to the southeast corner of township four (4) north, range ten (10) west; thence west to the south corner common to sections thirty-two (32) and thirty-three (33), township four (4) north, range ten (10) west; thence in a southerly and westerly direction to the top of the divide between Willow creek and Beef strait; thence along the top of said divide to the point where it intersects with the main range of the Rocky mountains; thence following the summit of said main range of the Rocky mountains as it trends in a southerly direction to the point where it is intersected by the divide between Bear creek and Johnson creek; thence following said divide in a southerly direction and continuing south to a point in the center of the channel of the Big Hole river; thence up along the center of the channel of the Big Hole river to the point where it is intersected by Pintler creek; thence up the center of the channel of Pintler creek to the summit of the Rocky mountains; thence in a northeasterly direction along the summit of the Rocky mountains to the line dividing ranges thirteen (13) and fourteen (14) west; thence north along said line to the northeast corner of township five (5) north, range fourteen (14) west; thence running east by township lines to the line dividing ranges eleven (11) and twelve (12) west; thence north to the southwest corner of section eighteen (18), township six (6) north, range eleven (11) west; thence east following section lines to the southeast corner of section fourteen (14), township six (6) north, range eight (8) west; thence north to the northeast corner of section two (2), township six (6) north, range eight (8) west; thence east to the summit of the main range of the Rocky mountains; thence in a southerly direction along the main range of the Rocky mountains to the place of beginning. The county seat is Anaconda, Montana.

History: County created Feb. 2, 1865, Bannack Stat., p. 529; boundaries established Dec. 10, 1867, L. 1867, p. 102; Sec. 2, Cod. Stat. 1871, p. 429; boundaries changed Feb. 5, 1876, L. 1876, p. 46; Sec. 324, 5th Div. Rev. Stat. 1879; Silver Bow created from portion of, L. 1881, p. 85; Sec. 731, 5th Div. Comp. Stat. 1887; boundary changed March 5, 1891, L. 1891, pp. 224-5; Granite county created from portion of, March 2, 1893, L. 1893, pp. 212-217; Secs. 4108, 4132, Pol. C. 1895; portion

added to Lewis and Clark, Feb. 28, 1899, L. 1899, p. 47; portion added to Flathead, March 6, 1899, L. 1899, p. 47; Powell county created out of, Jan. 31, 1901, L. 1901, p. 101; part of Silver Bow added to, Ch. 62, L. 1903, effective June 15, 1903; Secs. 2789, 2798, 2822, 2830, Rev. C. 1907; part added to Silver Bow by Ch. 21, L. 1917, effective May 1, 1917; boundaries defined by Ch. 205, L. 1921; re-en. Sec. 4316, R. C. M. 1921.

16-213. (4317) Fallon County. Beginning at the northwest corner of township ten (10) north, range fifty-six (56) east; thence running south along the west line of townships ten (10) and nine (9) north, range fifty-six (56) east, to the southwest corner of section thirty-one (31), township nine (9) north, range fifty-six (56) east; thence west along the second standard parallel north to the northwest corner of section six (6), township eight (8) north, range fifty-five (55) east; thence south along the west line of townships eight (8) and seven (7) north, range fifty-five (55) east, to the southwest corner of said township seven (7) north, range fifty-five (55) east; thence east along the south boundary line of township seven (7) north, range fifty-five (55) east, to the northwest corner of section six (6), township six (6) north, range fifty-five (55) east; thence south along the west boundary line of township six (6) and five (5) north, range fifty-five (55) east, to the southwest corner of section thirty-one (31), township five (5) north, range fifty-five (55) east; thence running east along the north boundary line of township four (4) north, to the northwest corner of section three (3), township four (4) north, range fifty-eight (58) east; thence south along the section line between sections three (3) and four (4), nine (9) and ten (10), fifteen (15) and sixteen (16), twenty-one (21) and twenty-two (22), twenty-seven (27) and twenty-eight (28), thirty-three (33) and thirty-four (34), to the northwest corner of section three (3), township three (3) north, range fifty-eight (58) east; thence east along the north line of township three (3) north, to the northwest corner of section three (3), township three (3) north, range fifty-nine (59) east; thence south along the section line between sections three (3) and four (4), nine (9) and ten (10), fifteen (15) and sixteen (16), twenty-one (21) and twenty-two (22), twenty-seven (27) and twenty-eight (28), thirty-three (33) and thirty-four (34), to the northwest corner of section three (3), township two (2) north, range fifty-nine (59) east; thence east along the north line of township two (2) north to the northwest corner of section three (3), township two (2) north, range sixty-one (61) east; thence south along the section line between sections three (3) and four (4), nine (9) and ten (10), fifteen (15) and sixteen (16), twenty-one (21) and twenty-two (22), twenty-seven (27) and twenty-eight (28), thirty-three (33) and thirty-four (34), to the northwest corner of section three (3), township one (1) north, range sixty-one (61) east; thence east along the north line of township one (1) north to the intersection of the eastern boundary line of the state of Montana; thence running north along the boundary line between Montana and North Dakota to an intersection with the south line of section

four (4), township ten (10) north, range sixty-one (61) east; thence west along section lines to the southwest corner of section six (6), township ten (10) north, range fifty-nine (59) east; thence north along the line between ranges fifty-eight (58) and fifty-nine (59) east to the southwest corner of section thirty (30), township eleven (11) north, range fifty-nine (59) east; thence west three (3) miles to the southwest corner of section twenty-seven (27), township eleven (11) north, range fifty-eight (58) east; thence north along the west line of said section twenty-seven (27) to the northwest corner thereof; thence west nine (9) miles along section lines to the southwest corner of section nineteen (19), township eleven (11) north, range fifty-seven (57) east; thence south to the southeast corner of township eleven (11) north, range fifty-six (56) east; thence west along the south line of township eleven (11) north, to the northwest corner of township ten (10) north, range fifty-six (56) east, being the place of beginning. The county seat is Baker, Montana.

History: County created by petition and election, effective Dec. 9, 1913, from portion of Custer county; Wibaux county created from portion of, Aug. 7, 1914; Prairie county created from portion of,

Feb. 5, 1915; Carter county created from portion of, Ch. 56, L. 1917; boundaries defined by Ch. 205, L. 1921; re-en. Sec. 4317, R. C. M. 1921.

16-214. (4318) Fergus County. Beginning at a point where the range line between ranges 26 and 27 east intersect with the middle of the main channel of the Missouri river running south along said range line to the southwest corner of township 21 north of range 27 east; thence along the township line between townships 20 and 21 north to the northeast corner of section 6 in township 20 north of range 27 east; thence south approximately 15 miles to the southeast corner of section 18 in township 18 north of range 27 east; thence west to the southwest corner of said section in said township and range approximately 1 mile; thence south approximately $\frac{1}{2}$ mile to the quarter corner on the east line of section 24 in township 18 north of range 26 east; thence west along the median line a distance of approximately 12 miles to the quarter corner on the west side of section 19 in township 18 north of range 25 east; thence south approximately $2\frac{1}{2}$ miles to the southwest corner of township 18 north of range 25 east; thence west to the northwest corner of township 17 north of range 24 east; thence south to southwest corner of said township and range; thence west to the northwest corner of township 16 north of range 24 east; thence south to the southwest corner of said township and range; thence east to the southeast corner of said township and range; thence south to the southwest corner of township 13 north of range 25 east of the Montana principal meridian; thence west to the northwest corner of township 12 north of range 25 east; thence south to the southwest corner of township 12 north of range 25 east; thence west along the township line between townships 11 and 12 north to the line between ranges 18 and 19 east; thence south along said range line to the northeast corner of section twenty-five (25), township eleven (11) north, range eighteen (18) east; thence west along the north line of sections twenty-five (25), twenty-six (26), twenty-seven (27), twenty-eight (28), twenty-nine (29) and thirty (30), township eleven (11) north, ranges eighteen (18) and seventeen (17) and sixteen (16) east, to the southeast corner of section nineteen (19), township eleven (11) north, range

sixteen (16) east; thence north along the east boundary of sections nineteen (19), eighteen (18), seven (7) and six (6) in said township eleven (11) north of range sixteen (16) east, to the northeast corner of the southeast quarter of section six (6) in said township eleven (11) north of range sixteen (16) east; thence west to the northwest corner of said southeast quarter of section six (6), in said township and range; thence north to the southwest corner of the southeast quarter of section nineteen (19), in township twelve (12) north, range sixteen (16) east; thence west to the southeast corner of section twenty-three (23), township twelve (12) north, range fifteen (15) east; thence north to the northeast corner of said section twenty-three (23) township twelve (12) north, range fifteen (15) east; thence west to the southeast corner of the southwest quarter of section fourteen (14), township twelve (12) north, range fifteen (15) east; thence north to the northeast corner of said southwest quarter of section fourteen (14), township twelve (12) north, range fifteen (15) east; thence west to the southeast corner of the northeast quarter of section sixteen (16), township twelve (12) north, range fifteen (15) east; thence north to the northeast corner of section sixteen (16) in township twelve (12) north, range fifteen (15) east; thence west to the southeast corner of the southwest quarter of the southeast quarter of section nine (9) in township twelve (12) north, range fifteen (15) east, thence north to the northeast corner of the northwest quarter of the southeast quarter of section four (4), township twelve (12) north, range fifteen (15) east, thence east to the southeast corner of the southeast quarter of the northwest quarter of section two (2), township twelve (12) north, range fifteen (15) east; thence north to the boundary line between townships twelve (12) and thirteen (13) north; thence east along said boundary line between townships twelve (12) and thirteen (13) north to the southeast corner of section thirty-four (34), township thirteen (13) north, range fifteen (15) east; thence north to the northeast corner of section twenty-seven (27), township thirteen (13) north, range fifteen (15) east; thence east to the southeast corner of the southwest quarter of the southwest quarter of section twenty-three (23), township thirteen (13) north, range fifteen (15) east; thence north to the northeast corner of the northwest quarter of the northwest quarter of section twenty-three (23), township thirteen (13) north, range fifteen (15) east; thence east to the southeast corner of section fourteen (14), township thirteen (13) north, range fifteen (15) east; thence north to the northeast corner of said section fourteen (14), township thirteen (13) north, range fifteen (15) east; thence east to the boundary line between ranges fifteen (15) and sixteen (16) east, thence north along said boundary line to the northeast corner of township sixteen (16) north, range fifteen (15) east; thence west to the southeast corner of township seventeen (17) north, range fourteen (14) east; thence north to the northeast corner of section twenty-four (24), township seventeen (17) north, range fourteen (14) east; thence west to the northwest corner of section nineteen (19), township seventeen (17) north, range fourteen (14) east; thence north to the northeast corner of township seventeen (17) north, range thirteen (13) east; thence west to the southeast corner of township eighteen (18) north, range twelve (12) east; thence north to the northeast corner of township

eighteen (18) north, range twelve (12) east; thence west to the southeast corner of section thirty-two (32), in township nineteen (19) north, range twelve (12) east; thence north along the east boundary line of sections thirty-two (32), twenty-nine (29), twenty (20), and seventeen (17), all in township nineteen (19) north, range twelve (12) east to the northeast corner of section seventeen (17), in township nineteen (19) north, range twelve (12) east; thence east along the section lines to a point at the middle of Arrow creek; thence in a northeasterly direction down the middle of Arrow creek to a point in the center of the main channel of the Missouri river opposite the mouth of Arrow creek; thence down the middle of the main channel of the Missouri river to the point of beginning. The county seat is Lewistown, Montana.

History: County created March 12, 1885, L. 1885, p. 78, effective Dec. 1, 1886; 5th Div. Comp. Stat. 1887, Sec. 743; Cascade county detached Sept. 12, 1887, Ex. L. 1887, p. 104; Sec. 4120, Pol. C. 1895; portion added to Cascade, March 1, 1897, L. 1897, p. 50; also portion added to Cascade, Feb. 28, 1899, L. 1899, p. 41; boundaries extended Feb. 21, 1907, Ch. 28, L. 1907; Sec. 2811, Rev. C. 1907; Musselshell county created from portion of Fergus, Ch. 25, L. 1911, effective March 1, 1911; Judith

Basin county created Dec. 10, 1920, from portion of Fergus; boundaries defined by Ch. 205, L. 1921; re-en. Sec. 4318, R. C. M. 1921; amd. Sec. 1, Ch. 93, L. 1925; amd. Sec. 1, Ch. 173, L. 1951.

NOTE.—Amendment of this section by Ch. 93, Laws 1925, held unconstitutional in *State ex rel. Foot v. Burr et al.*, 73 M 586, 238 P 585, in so far as it assumed to include within the boundaries of Fergus County the entire territory embraced in Petroleum county.

16-215. (4319) Flathead County. Commencing on the forty-ninth (49th) parallel of latitude at a point where the same is intersected by the summit of the main range of the Rocky mountains; thence in a southerly direction following the summit of said mountain range to an intersection with the south line of the north tier of sections of township twenty-one (21) north; thence running westerly along said line to the corner common to sections five (5), six (6), seven (7) and eight (8), township twenty-one (21) north, range twenty-three (23) west; thence running north ten (10) miles along the section line situated one (1) mile east of the line dividing range twenty-three (23) west and range twenty-four (24) west to the southeast corner of section eighteen (18), township twenty-three (23) north, range twenty-three (23) west; thence running west along the section line one (1) mile to the southwest corner of said section eighteen (18); thence running north on the range line to the sixth standard parallel north; thence west and along said parallel to the southeast corner of section thirty-one (31), township twenty-five (25) north, range twenty-six (26) west; thence north along said section line to the southeast corner of section eighteen (18), township twenty-six (26) north, range twenty-six (26) west; thence west one (1) mile to the southwest corner of said section eighteen (18); thence north to the northeast corner of township twenty-seven (27) north, range twenty-seven (27) west; thence west to the southwest corner of section thirty-four (34), township twenty-eight (28) north, range twenty-seven (27) west; thence north to the northwest corner of section three (3) in township twenty-eight (28) north, range twenty-seven (27) west; thence east to the southeast corner of township twenty-nine (29) north, range twenty-six (26) west; thence north along the Horse Plains guide meridian to the northeast corner of township thirty-two (32) north, range twenty-six

(26) west; thence west to the southeast corner of township thirty-three (33) north, range twenty-six (26) west; thence north along the Horse Plains guide meridian to the northeast corner of township thirty-three (33) north, range twenty-six (26) west; thence east about twelve (12) miles to the summit of the watershed dividing the Stillwater river and White Fish creek; thence in a northwesterly direction along said water shed to its intersection with the forty-ninth parallel of latitude; thence east along said parallel to the place of beginning. The county seat is Kalispell, Montana.

History: County created by act of Feb. 6, 1893, L. 1893, p. 198, effective March 1, 1893; Sec. 4123, Pol. C. 1895; Sec. 2820, Rev. C. 1907; portion of Deer Lodge county added by act of March 6, 1899, L. 1899, p. 47; Sec. 2822, Rev. C. 1907; Lincoln county detached by Ch. 133, L. 1909; boundaries changed by Ch. 42, L. 1913; boundaries defined by Ch. 205, L. 1921; reen. Sec. 4319, R. C. M. 1921.

Judicial Notice of Boundaries

The courts of the state will take judicial notice of the boundaries of the various counties as established and defined by the codes. *State v. Williams*, 122 M 279, 202 P 2d 245, 246.

16-216. (4320) Gallatin County. Beginning at the intersection of the continental divide, the same being the boundary line between the state of Montana and the state of Idaho, with what will be when it is surveyed, a line two (2) miles east of the west line of township thirteen (13) south, range three (3) east; thence northerly along said line to the southwest corner of section thirty-three (33), township nine (9) south, range three (3) east; thence north along the section line to the northwest corner of section four (4), township eight (8) south, range three (3) east; thence along what will be when surveyed, the west line of sections thirty-three (33), twenty-eight (28), twenty-one (21), sixteen (16), nine (9) and four (4), township seven (7) south, range three (3) east, to the southwest corner of section thirty-three (33), township six (6) south, range three (3) east; thence north along the section lines to the northwest corner of section nine (9), township six (6) south, range three (3) east; thence north to what will be when surveyed, the northwest corner of section four (4), township six (6) south, range three (3) east; thence east along the first standard parallel south to what will be, when surveyed, the southwest corner of section thirty-four (34), township five (5) south, range three (3) east; thence north along what will be, when surveyed, the west line of sections thirty-four (34), twenty-seven (27), twenty-two (22), fifteen (15), ten (10) and three (3), to the northwest corner of section three (3), township five (5) south, range three (3) east; thence north along the section line to the southwest corner of section twenty-two (22), township two (2) south, range three (3) east; thence west along the section line to the southwest corner of section nineteen (19), township two (2) south, range two (2) east; thence north to the southeast corner of section thirteen (13); thence west to the southwest corner of section thirteen (13); thence north to the northwest corner of section eleven (11); thence west to the southwest corner of section eleven (11); thence north to the northwest corner of section eleven (11); thence west to the southwest corner of section three (3); thence north to the northwest corner of section three (3), all in township two (2) south, range one (1) east; thence west to the southwest corner of section thirty-three (33); thence north to the northwest corner of section thirty-

three (33); thence west to the southwest corner of section twenty-nine (29); thence north to the northwest corner of section twenty-nine (29); thence west to the southwest corner of section nineteen (19); thence north to the northwest corner of section nineteen (19), all in township one (1) south, range one (1) east; thence west along the section line to the southwest corner of section fifteen (15); thence north along the section line to the northwest corner of section ten (10); thence west along the section line to the southwest corner of section five (5); thence north to the northwest corner of section five (5); thence west along the north line of section six (6) to the northwest corner thereof, all in township one (1) south, range one (1) west; thence west along the south line of section thirty-six (36), township one (1) north, range two (2) west, to the southwest corner thereof; thence north along the west line of said section thirty-six (36) to a point in the center of the main channel of Jefferson river; thence down the middle of the Jefferson river to its mouth; thence down the middle of the Missouri river to the intersection with a curve line 500 feet southeasterly from the main line of the Chicago, Milwaukee and St. Paul railroad where the same crosses the Missouri river; thence in a general northeasterly direction 500 feet distant from and parallel to the center line of the Chicago, Milwaukee and St. Paul railroad to the west line of section nine (9), township four (4) north, range three (3) east; thence north along said west line to a point therein 500 feet distant from, in a northerly direction, the center line of the said Chicago, Milwaukee and St. Paul railroad; thence in a general northeasterly direction parallel to and 500 feet distant from the center line of the Chicago, Milwaukee and St. Paul railroad to the west line of section three (3), township four (4) north, range three (3) east; thence north along the west boundary of section three (3) to the northwest corner thereof; thence east along the first standard parallel north to the southwest corner of section thirty-four (34), township five (5) north, range three (3) east; thence north along the section line to the west quarter corner of section fifteen (15), township five (5) north, range three (3) east; thence east along the half section line to the east quarter corner of section thirteen (13), township five (5) north, range four (4) east; thence north to what will be, when the same is surveyed, the west quarter corner of section eighteen (18), township five (5) north, range five (5) east; thence east through what will be, when the same is surveyed, the centers of sections eighteen (18), seventeen (17), sixteen (16), fifteen (15), fourteen (14) and thirteen (13), township five (5) north, range five (5) east, to the west quarter corner of section eighteen (18), township five (5) north, range six (6) east; thence east along the half section line to the east quarter corner of section thirteen (13), township five (5) north, range seven (7) east; thence south along the township line to the southeast corner of township five (5) north, range seven (7) east; thence west along the first standard parallel north to the northeast corner of township four (4) north, range seven (7) east; thence south along the township line to the southeast corner of township one (1) north, range seven (7) east; thence west along the base line to the northeast corner of township one (1) south, range seven (7) east; thence south along the township line to the east quarter corner of section twelve

(12), township three (3) south, range seven (7) east; thence west through the center of sections twelve (12), eleven (11), and ten (10), to the east quarter corner of section (9); thence south along the section line to the southeast corner of section thirty-three (33), township three (3) south, range seven (7) east; thence west to the southeast corner of township three (3) south, range six (6) east; thence south to what will be, when the same is surveyed, the southwest corner of township five (5) south, range seven (7) east; thence west to what will be, when the same is surveyed, the northwest corner of township six (6) south, range six (6) east; thence south along what will be the township line, when the same is surveyed, to the north boundary of the Yellowstone national park; thence west along the said north boundary to the northwest corner of the Yellowstone national park; thence south along the west boundary of the Yellowstone national park to its intersection with the Continental divide, the same being the boundary line between the state of Montana and the state of Idaho; thence northwesterly along said Continental divide to the point of beginning. The county seat is Bozeman, Montana.

History: County created Feb. 2, 1865, Bannack Stat., p. 530; Meagher county created out of, Nov. 16, 1867, L. 1867, p. 99; Sec. 8, Cod. Stat. 1871, p. 431; N. boundary changed, Feb. 13, 1874, p. 67; Sec. 330, 5th Div. Rev. Stat. 1879; boundaries extended Feb. 14, 1881, L. 1881, p. 124; Yellowstone county created out of part of, Feb. 25, 1883, L. 1883, pp. 119-122; Sec. 737, 5th Div. Comp. Stat. 1887; Park

county created out of, Feb. 23, 1887, Comp. Stat. 1887, p. 1238; Sec. 4114, Pol. C. 1895; Sec. 2801, Rev. C. 1907; boundaries established, Ch. 60, L. 1913; boundaries defined by Ch. 205, L. 1921; re-en. Sec. 4320, R. C. M. 1921.

References

Yellowstone Park Transp. Co. v. Galatin County et al., 27 F 2d 410.

16-217. (4321) Garfield County. Beginning at the point of intersection of the middle of the Missouri river with the north line of township twenty-five (25) north, range forty-one (41) east; thence running east along the north line of said township to the northeast corner thereof; thence due south along the range line between ranges forty-one (41) and forty-two (42) east, to the southeast corner of township twenty-five (25) north, range forty-one (41) east; thence east along the north line of township twenty-four (24) north, range forty-two (42) east, to the northeast corner thereof; thence south along the range line between ranges forty-two (42) and forty-three (43) east and said range line extended to the point of intersection of said range line extended, with the north line of township twenty (20) north, the same being the southeast corner of unsurveyed township twenty-one (21) north, range forty-two (42) east; thence west along the north line, extended, of township twenty (20) north, to the point of intersection of said extended north line with the range line between ranges forty-two (42) and forty-three (43) east, extended, the same being the northeast corner of unsurveyed township twenty (20) north, range forty-two (42) east; thence due south along the range line between ranges forty-two (42) and forty-three (43) east, to the southeast corner of township nineteen (19) north, range forty-two (42) east; thence due east along the north line of township eighteen (18) north, range forty-three (43) east, to the northeast corner of township eighteen (18) north, range forty-three (43) east; thence due south along the range line between ranges forty-three (43) and forty-four (44) east, to the south-

(33), thirty-two (32), and thirty-one (31), township thirteen (13) north, range thirty-one (31) east, and the north line of sections thirty-six (36), thirty-five (35), and thirty-four (34), township thirteen (13) north, range thirty (30) east, or to a point in the center of the channel of the Musselshell river, where said section line intersects said river, the same being a point one (1) mile north of the third standard parallel; thence following the center of the channel of the Musselshell river in a northerly direction to its confluence with the Missouri river; thence running in a northeasterly direction following the center of the channel of the Missouri river to the place of beginning. The county seat is Jordan, Montana.

History: County created by Ch. 4, L. county; boundaries defined by Ch. 205, L. 1919, effective April 1, 1919, from Dawson 1921; re-en. Sec. 4321, R. C. M. 1921.

16-218. (4322) Glacier County. Beginning at the point where the international boundary between the United States and Canada intersects the range line between ranges four (4) and five (5) west; thence west, following said international boundary to its intersection with the summit of the main range of the Rocky mountains; thence meandering in a southeasterly direction and following the summit of the main range of the Rocky mountains to a point which intersects the township line common to townships twenty-nine (29) and thirty (30) north; thence in an easterly direction on the township line common to townships twenty-nine (29) and thirty (30) north, to the southeast corner of section thirty-six (36), township thirty (30) north, range eight (8) west; thence in a northerly direction on the township line between ranges seven (7) and eight (8) west, to the northeast corner of section one (1), township thirty-one (31) north, range eight (8) west; thence in an easterly direction on the township line between townships thirty-one (31) and thirty-two (32), to a point where said township line intersects with the Marias river; thence, following on down the center of the channel of the Marias river to its intersection with the line between ranges four (4) and five (5) west, thence north following the line between ranges four (4) and five (5) west, to the point of beginning. The county seat is Cut Bank, Montana.

History: County created by Ch. 21, L. Ch. 205, L. 1921; re-en. Sec. 4322, R. C. M. 1919, effective April 1, 1919, from portions 1921. of Teton county; boundaries defined by

16-219. (4323) Golden Valley County. Beginning at the northeast corner of section one (1), in township eleven (11) north, of range twenty-one (21) east, thence south nine (9) miles to the southeast corner of section thirteen (13), in township ten (10) north, range twenty-one (21) east; thence east one (1) mile to the northeast corner of section nineteen (19), in township ten (10) north, range twenty-two (22) east; thence south three (3) miles to the southeast corner of section thirty-one (31), in township ten (10) north, range twenty-two (22) east; thence east four (4) miles to the northeast corner of section two (2), township nine (9) north, range twenty-two (22) east; thence south six (6) miles to the southeast corner of section thirty-five (35), in township nine (9) north, range twenty-two (22) east; thence east along the township line about one (1) mile and twelve (12) chains to the northeast corner of section six (6), township eight (8) north, range twenty-three (23) east; thence south to the southeast corner of

section seven (7), in township eight (8) north, of range twenty-three (23) east; thence east one (1) mile to the northeast corner of section seventeen (17), township eight (8) north, range twenty-three (23) east; thence south six (6) miles to the southeast corner of section eight (8), in township seven (7) north, range twenty-three (23) east; thence east one (1) mile to the northeast corner of section sixteen (16), in township seven (7) north, range twenty-three (23) east; thence south one (1) mile to the southeast corner of section sixteen (16), in township seven (7) north, range twenty-three (23) east; thence east one-half ($\frac{1}{2}$) mile to the north quarter ($\frac{1}{4}$) corner of section twenty-two (22), township seven (7) north, range twenty-three (23) east; thence south two (2) miles to the south quarter ($\frac{1}{4}$) corner of section twenty-seven (27), township seven (7) north, range twenty-three (23) east; thence east one-half ($\frac{1}{2}$) mile to the northeast corner of section thirty-four (34), township seven (7) north, range twenty-three (23) east; thence south one (1) mile to the southeast corner of section thirty-four (34), township seven (7) north, range twenty-three (23) east; thence east one (1) mile to the northeast corner of section two (2), in township six (6) north, range twenty-three (23) east; thence south two (2) miles to the southeast corner of section eleven (11), in township six (6) north, range twenty-three (23) east; thence east one (1) mile to the northeast corner of section thirteen (13), township six (6) north, range twenty-three (23) east; thence south ten (10) miles to the southeast corner of section thirty-six (36), township five (5) north, range twenty-three (23) east; thence west along the first standard parallel north thirty (30) miles to the southwest corner of section thirty-one (31), township five (5) north, range nineteen (19) east; thence west to the northeast corner of section one (1) township four (4) north, range eighteen (18) east; thence south six (6) miles along the range line between ranges eighteen (18) and nineteen (19) east, to the southeast corner of section thirty-six (36), township four (4) north, of range eighteen (18) east; thence west nine (9) miles to the southwest corner of section thirty-four (34), township four (4) north, range seventeen (17) east; thence north six (6) miles to the southwest corner of section thirty-four (34), township five (5) north, range seventeen (17) east; thence west three (3) miles to the southwest corner of section thirty-one (31), township five (5) north, range seventeen (17) east; thence north six (6) miles to the northwest corner of section six (6), township five (5) north, range seventeen (17) east; thence east twelve (12) miles to the northwest corner of section six (6), township five (5) north, range nineteen (19) east; thence north along the range line between ranges eighteen (18) and nineteen (19), thirty-six (36) miles to the northwest corner of township eleven (11) north, range nineteen (19) east; thence east along the township line between townships eleven (11) and twelve (12) north, eighteen (18) miles to the northeast corner of section one (1), township eleven (11) north, range twenty-one (21) east, being the place of beginning. The county seat is Ryegate, Montana.

History: County created by petition boundaries defined by Ch. 205, L. 1921; and election, effective October 4, 1920, from re-en. Sec. 4323, R. C. M. 1921. portions of Musselshell and Sweetgrass;

16-220. (4324) Granite County. Beginning at the northeast corner of township five (5) north, range fourteen (14) west, thence running east to the southeast corner of township six (6) north, range twelve (12) west, thence running north following the lines between ranges eleven (11) and twelve (12) west, to an intersection with the divide between Big Blackfoot and Hell Gate rivers, thence westerly along the summit of the divide to an intersection with the range line between ranges thirteen (13) and fourteen (14) west, thence north along said range line to the northeast corner of section one (1), township twelve (12) north, range fourteen (14) west, thence west along the township line between townships twelve (12) and thirteen (13) north, to the northwest corner of section six (6), township twelve (12) north, range fourteen (14) west, thence south to the southwest corner of section seven (7), township twelve (12) north, range fourteen (14) west, thence west to the northwest corner of section fifteen (15), township twelve (12) north, range fifteen (15) west, thence south to the southwest corner of section thirty-four (34), township twelve (12) north, range fifteen (15) west, thence west to the northwest corner of section six (6) township eleven (11) north, range fifteen (15) west, thence south to the northeast corner of section twelve (12), township eleven (11) north, range sixteen (16) west, thence west to the north quarter corner of section twelve (12), township eleven (11) north, range sixteen (16) west, which is the northwest corner of lot one (1) of section twelve (12), township eleven (11) north, range sixteen (16) west, thence south to the south quarter corner of section twelve (12), township eleven (11) north, range sixteen (16) west, which is the southwest corner of lot four (4) of said section twelve (12), thence west to the northwest corner of section eighteen (18), township eleven (11) north, range sixteen (16) west, thence south to the southwest corner of section thirty-one (31), township eleven (11) north, range sixteen (16) west, thence running west along the township line between townships ten (10) and eleven (11) north, to an intersection with the summit of the divide between the Bitter Root river and Rock creek, thence running in a southerly direction following the summit of said divide to its intersection with the continental divide, thence following the continental divide in a general northeasterly direction to its intersection with the line between ranges thirteen (13) and fourteen (14) west, thence north following the said line to the place of beginning. The county seat is Philipsburg, Montana.

The boundaries of Missoula County are amended to conform to the provisions of this act.

History: County created March 2, 1893, L. 1893, p. 212; Sec. 4131, Pol. C. 1895; Sec. 2829, Rev. C. 1907; boundaries defined by Ch. 205, L. 1921; re-en. Sec. 4324, R. C. M. 1921; amd. Secs. 1 and 2, Ch. 223, L. 1943.

16-221. (4325) Hill County. Commencing at the section corner between sections three (3) and four (4), township thirty-seven (37) north, range seventeen (17) east, which is on the international boundary line between the United States and Canada; thence south about six (6) miles to the southeast corner of section thirty-three (33), township thirty-seven (37) north, range seventeen (17) east; thence west along the ninth standard parallel north to the closing corner common to sections three (3) and four (4), township thirty-six (36) north, range seventeen (17) east; thence

south about twenty-four (24) miles on a line dividing the east and west half of townships thirty-three (33), thirty-four (34), thirty-five (35), and thirty-six (36) north, range seventeen (17) east, to the southeast corner of section thirty-three (33), township thirty-three (33) north, range seventeen (17) east; thence east on the eighth standard parallel north to the closing corner common to sections two (2) and three (3), township thirty-two (32) north, range seventeen (17) east; thence south about three (3) miles, following the section line to the southwest corner of section fourteen (14), township thirty-two (32) north, range seventeen (17) east; thence east about one and one-half ($1\frac{1}{2}$) miles to the quarter corner between sections thirteen (13) and twenty-four (24), township thirty-two (32) north, range seventeen (17) east; thence south on the quarter section line, about five (5) miles to the quarter corner between sections twelve (12) and thirteen (13), township thirty-one (31) north, range seventeen (17) east; thence west about one and one-half ($1\frac{1}{2}$) miles to the northwest corner of section fourteen (14), township thirty-one (31) north, range seventeen (17) east; thence south about four (4) miles to the southeast corner of section thirty-four (34), township thirty-one (31) north, range seventeen (17) east; thence west about one (1) mile to the southwest corner of said section thirty-four (34); thence south about seven (7) miles to the southwest corner of section three (3), township twenty-nine (29) north, range seventeen (17) east; thence west about one and one-half ($1\frac{1}{2}$) miles to the quarter corner on the north boundary of section eight (8), township twenty-nine (29) north, range seventeen (17) east; thence south on the quarter section line about five (5) miles to the quarter corner on the south boundary of section thirty-two (32), township twenty-nine (29) north, range seventeen (17) east; thence east about one (1) mile to the northwest corner of section three (3), township twenty-eight (28) north, range seventeen (17) east; thence south on the section line to the southeast corner of section thirty-three (33), township twenty-eight (28) north, range seventeen (17) east; thence running west along the township line between townships twenty-seven (27) and twenty-eight (28), for about nine (9) miles to the point where said township line intersects the range line between ranges fifteen (15) and sixteen (16) east; thence running north along said range line between ranges fifteen (15) and sixteen (16), when surveyed, about six (6) miles to the point where the said range line, when surveyed, will intersect the township line between townships twenty-eight (28) and twenty-nine (29) north, when surveyed; thence running west about six (6) miles along said township line between townships twenty-eight (28) and twenty-nine (29), when surveyed, to the point where the said township line intersects the range line between ranges fourteen and fifteen east; thence running north about six (6) miles along said line between ranges fourteen (14) and fifteen (15), to the point where the said range line intersects the line between townships twenty-nine (29) and thirty (30) north; thence running west about thirty-six (36) miles along the said line between said townships to the intersection of said township line with the line running between ranges eight (8) and nine (9) east; thence running south about six (6) miles along said line between ranges eight (8) and nine (9) to the point where the said line intersects the line

running between townships twenty-eight (28) and twenty-nine (29) north; thence running west about six (6) miles to the southwest corner of section thirty-one (31), township twenty-nine (29) north, range eight (8) east; thence running north about fifty-four (54) miles along the line between ranges seven (7) and eight (8) east, observing the offsets, jogs and corrections to the point where said line between ranges seven (7) and eight (8) east, intersects the Canadian boundary line; thence running east about fifty-seven (57) miles along the Canadian boundary line to the point of beginning. The county seat is Havre, Montana.

History: County created by petition and election, effective Feb. 28, 1912, from portion of Chouteau county; Toole county detached, May 7, 1914; Liberty county de-

tached, Feb. 11, 1920; boundaries defined by Ch. 205, L. 1921; re-en. Sec. 4325, R. C. M. 1921.

16-222. (4326) Jefferson County. Beginning at the southwest corner of township four (4) north, range one (1) west; thence running east along the south line of said township to the Montana principal meridian; thence running south along said meridian to the center of the channel of the Jefferson river; thence in a westerly direction, following the center of the channel of said river to Parson's bridge on said river; thence westerly along Parson's toll-road, leading from Parson's bridge to the city of Butte, to the point where said road crosses Fish creek; thence up Fish creek to the head of Belcher's ditch; thence in a direct line to the forks of Little Pipestone creek, near the site of Parson's old toll-gate; thence up the north fork of Little Pipestone creek to its source; thence in a direct line to the nearest point of the Continental divide; thence northerly along said Continental divide to the head of Ten-Mile creek, township eight (8) north, range six (6) west; thence in a northeasterly direction following the divide between Ten-Mile creek and the North Boulder to the divide between Lump gulch and Ten-Mile creek; thence along said divide between the waters of Grizzly gulch and Lump gulch to the divide between the waters that come into Dry gulch above Helena and the waters of Prickly Pear creek to the north peak of the mountains southeasterly from Helena, known as Dry Gulch mountains; thence due east to an intersection with the line between ranges one (1) and two (2) west; thence running south on said line to the place of beginning. The county seat is Boulder, Montana.

History: County created Feb. 2, 1865, Bannack Stat., p. 530 (see Ch. XIX of Second Ter. Ses.); boundaries established Dec. 2, 1867, L. 1867, p. 104; Sec. 5, Cod. Stat. 1871, p. 430; Sec. 327, 5th Div. Rev. Stat. 1879; boundaries changed March 7, 1883, L. 1883, p. 97; Sec. 734, 5th Div.

Comp. Stat. 1887; boundaries changed March 5, 1891, L. 1891, pp. 224, 225; Secs. 4108-4111, Pol. C. 1895; Broadwater county created, including part of, Feb. 9, 1897, L. 1897, pp. 45-49; Secs. 2793, 2835, Rev. C. 1907; boundaries defined by Ch. 205, L. 1921; re-en. Sec. 4326, R. C. M. 1921.

16-223. (4327) Judith Basin County. Beginning at the northeast corner of township sixteen (16) north, range fifteen (15) east; thence west to the southeast corner of township seventeen (17) north, range fourteen (14) east; thence north to the northeast corner of section twenty-four (24), in township seventeen (17) north, range fourteen (14) east; thence west to the northwest corner of section nineteen (19), township seventeen (17) north, range fourteen (14) east; thence north to the northeast corner of township seventeen (17) north, range thirteen (13) east; thence west to the

southeast corner of township eighteen (18) north, range twelve (12) east; thence north to the northeast corner of township eighteen (18) north; range twelve (12) east; thence west to the southeast corner of section thirty-two (32), in township nineteen (19) north, range twelve (12) east; thence north along the east boundary line of sections thirty-two (32), twenty-nine (29), twenty (20) and seventeen (17), all in township nineteen (19) north, range twelve (12) east to the northeast corner of section seventeen (17), in township nineteen (19) north, range twelve (12) east; thence west along the north boundary line of sections seventeen (17), and eighteen (18), in township nineteen (19) north, range twelve (12) east; thence west along the north boundary line of section thirteen (13), fourteen (14), fifteen (15), sixteen (16), seventeen (17), and eighteen (18), in township nineteen (19) north, ranges eleven (11), ten (10), and nine (9) east, to the northwest corner, of section eighteen (18), township nineteen (19) north, range nine (9) east; thence south to the southeast corner of township nineteen (19) north, range eight (8) east; thence west to the southwest corner of said township nineteen (19) north, range eight (8) east; thence south along the range line between ranges seven (7) and eight (8) east, a distance of four and one-fourth ($4\frac{1}{4}$) miles, more or less, to the southeast corner of the northeast quarter of the northeast quarter ($NE\frac{1}{4}NE\frac{1}{4}$) of section twenty-five (25), township eighteen (18) north, range seven (7) east; thence west one-fourth ($\frac{1}{4}$) mile to the southwest corner of said northeast quarter of the northeast quarter ($NE\frac{1}{4}NE\frac{1}{4}$) of section twenty-five (25); thence north a distance of three-fourths ($\frac{3}{4}$) of a mile, to the northeast corner of the northwest quarter of the southeast quarter ($NW\frac{1}{4}SE\frac{1}{4}$) of section twenty-four (24), township eighteen (18) north, range seven (7) east; thence west a distance of three-fourths ($\frac{3}{4}$) of a mile to the quarter ($\frac{1}{4}$) corner on the west boundary of said section twenty-four (24); thence south a distance of four (4) miles, more or less, to the quarter ($\frac{1}{4}$) corner on the west boundary of section twelve (12), township seventeen (17) north, range seven (7) east; thence east a distance of one-half ($\frac{1}{2}$) mile to the center of said section twelve (12); thence south one (1) mile to the center of section thirteen (13), township seventeen (17) north, range seven (7) east; thence east one-half ($\frac{1}{2}$) mile to the quarter ($\frac{1}{4}$) corner on the east boundary of said section thirteen (13), township seventeen (17) north, range seven (7) east; thence south along the boundary line between ranges seven (7) and eight (8), as corrected by the United States government survey thereof, to the southwest corner of township sixteen (16) north, range eight (8) east; thence east to the southeast corner of said township sixteen (16) north, range eight (8) east; thence south along the boundary line between ranges eight (8) and nine (9) east, as corrected by the United States government survey thereof, to the summit of the main range of the Little Belt mountains; thence in a southeasterly direction along the summit of the main range of said Little Belt mountains to the boundary line between ranges ten (10) and eleven (11) east; thence easterly along the divide between the waters of Musselshell river and Judith river to the most easterly point of the Little Belt mountains at Judith Gap; thence east to the southeast corner of section nineteen (19), township eleven (11) north, range sixteen (16) east; thence north along the east boundary of

sections nineteen (19), eighteen (18), seven (7), and six (6), in said township eleven (11) north, range sixteen (16) east; to the northeast corner of the southeast quarter of section six (6), in said township eleven (11) north, range sixteen (16) east; thence west to the northwest corner of said southeast quarter of said section six (6) in said township and range; thence north to the southwest corner of the southeast quarter of section nineteen (19), in township twelve (12) north, range sixteen (16) east; thence west to the southeast corner of section twenty-three (23), in township twelve (12) north, range fifteen (15) east; thence north to the northeast corner of said section twenty-three (23), in township twelve (12) north, range fifteen (15) east; thence west to the southeast corner of the southwest quarter of section fourteen (14), in township twelve (12) north, range fifteen (15) east; thence north to the northeast corner of said southwest quarter of section fourteen (14), in township twelve (12) north, range fifteen (15) east; thence west to the southeast corner of the northeast quarter of section sixteen (16), in township twelve (12) north, range fifteen (15) east; thence north to the northeast corner of section sixteen (16) in township twelve (12) north, range fifteen (15) east; thence west to the southeast corner of the southwest quarter of the southeast quarter ($SW\frac{1}{4}SE\frac{1}{4}$) of section nine (9), in township twelve (12) north, range fifteen (15) east; thence north to the northeast corner of the northwest quarter of the southeast quarter ($NW\frac{1}{4}SE\frac{1}{4}$) of section four (4), in township twelve (12) north, range fifteen (15) east; thence east to the southeast corner of the southeast quarter of the northwest quarter ($SE\frac{1}{4}NW\frac{1}{4}$) of section two (2), in township twelve (12) north, range fifteen (15) east; thence north to the boundary line between townships twelve (12) and thirteen (13) north; thence east along said boundary line between townships twelve (12) and thirteen (13) north, to the southeast corner of section thirty-four (34), in township thirteen (13) north, range fifteen (15) east; thence north to the northeast corner of section twenty-seven (27), township thirteen (13) north, range fifteen (15) east; thence east to the southeast corner of the southwest quarter of the southwest quarter ($SW\frac{1}{4}SW\frac{1}{4}$) of section twenty-three (23), in township thirteen (13) north, range fifteen (15) east; thence north to the northeast corner of the northwest quarter of the northwest quarter ($NW\frac{1}{4}NW\frac{1}{4}$) of section twenty-three (23), in township thirteen (13) north, range fifteen (15) east; thence east to the southeast corner of section fourteen (14), township thirteen (13) north, range fifteen (15) east; thence north to the northeast corner of said section fourteen (14), in township thirteen (13) north, range fifteen (15) east; thence east to the boundary line between ranges fifteen (15) and sixteen (16) east; thence north along said boundary line to the place of beginning. The county seat is Stanford, Montana.

History: County created by petition and election, effective December 10, 1920, from portions of Fergus and Cascade; boundaries defined by Ch. 205, L. 1921; re-en. Sec. 4327, R. C. M. 1921; amd. Sec.

2, Ch. 93, L. 1925; amd. Sec. 2, Ch. 173, L. 1951.

NOTE.—Stanford, Montana, was selected as county seat of Judith Basin county, in accordance with the provisions for selecting county seats.

16-224. (4327.1) Lake County. Commencing at the northwest corner of township 25 north, range 22 west, M. M., thence east on said township

line to the east shore of Flathead lake; thence in a general northerly direction along said lake shore to the meander corner on the south line of section 12, township 26 north, range 20 west, Montana meridian; thence east along the south line of said section 12, township 26 north, range 20 west, and continuing east along the south line of section 7, township 26 north, range 19 west, to the southeast corner of said section; thence north along the east side of said section 7 to the northeast corner of said section; thence east along the south line of section 5, township 26 north, range 19 west, to the southeast corner of said section 5; thence north along the east side of said section 5 to the north line of township 26 north, range 19 west, M. M.; thence east along the north line of township 26 north, range 19 west, and said township line extended to the summit of the Swan range of the Rocky mountains; thence in a general southeasterly direction along the Swan divide between the Swan river and the south fork of the Flathead river, approximately three miles, to Red Owl mountain; thence continuing southeasterly and southerly along the summit of said divide, approximately 20 miles to Swan peak; thence southerly along said divide to a point where a line so drawn intersects the north boundary of Missoula county; thence west along the north boundary of Missoula county to the summit of the Mission range; thence in a southerly and southeasterly direction along the summit of the Mission range to a point where the summit of the Mission range intersects the west line of township 17 north, range 17 west; thence south along said township line to the southeast corner of township 17 north, range 18 west; thence west along the south line of said township to the northwest corner of township 16 north, range 18 west; thence south about three miles to the southeast corner of section 13, township 16 north, range 19 west; thence westerly along the mid-township line of township 16 north, range 19 west and continuing westerly along the mid-township line of township 16 north, range 20 west, to the point where said line intersects the boundary division line of Sanders and Missoula counties; thence in a northerly direction to the northwest corner of township 16 north, range 20 west; thence west to the southeast corner of township 17 north, range 21 west; thence north along township line to the northeast corner of township 18 north, range 21 west; thence due west along the north line of said township to the center of the main channel of the Flathead river; thence following the center line of the main channel of the Flathead river in a northerly direction to a point where it intersects the south line of the north tier of sections of township 21 north; thence due west along section line to the southeast corner of section 6, township 21 north, range 23 west; thence due north along section line to the southeast corner of section 18, township 23 north, range 23 west; thence west about one mile to the southwest corner of said section; thence north along township line to the north line of township 23 north, range 23 west; thence east along the north line of township 23 north, of range 23 west, to the northeast corner of said township; thence north along range line to the northeast corner of township 24, range 23 west; thence west along north line of township 24 north, to the southwest corner of township 25, range 22 west; thence

north to the place of beginning. The city of Polson, Montana, shall be the county seat of the said county of Lake.

History: En. by resolution, effective
Aug. 10, 1923, p. 623, L. 1923.

16-225. (4328) Lewis and Clark County. Beginning at a point where the Sun river crosses the Helena guide meridian; thence up Sun river on the most northerly branch thereof that heads in the Rocky mountains to the crest of the said Rocky mountains; thence southerly along the crest of the said Rocky mountains to the point where said crest is intersected by the west boundary line of range eleven (11) west; thence south along the west boundary line of townships twenty (20), nineteen (19), eighteen (18), and seventeen (17) north, range eleven (11) west, to the southwest corner of township seventeen (17) north, range eleven (11) west; thence east along the south boundary of township seventeen (17) north, range eleven (11) west, to the northwest corner of township sixteen (16) north, range nine (9) west; thence south along the west boundary line of townships sixteen (16), fifteen (15), fourteen (14), and thirteen (13) north, range nine (9) west, to the southwest corner of township thirteen (13) north, range nine (9) west; thence east along the south boundary line of township thirteen (13) north, ranges nine (9) and eight (8) west, to the northwest corner of township twelve (12) north, range seven (7) west; thence south along the west boundary line of townships twelve (12) and eleven (11) north, range seven (7) west, to the southwest corner of section eighteen (18), township eleven (11) north, range seven (7) west; thence east along the south boundary lines of sections eighteen (18), seventeen (17), sixteen (16), fifteen (15), fourteen (14), and thirteen (13), township eleven (11) north, range seven (7) west, to the southwest corner of section eighteen (18), township eleven (11) north, range six (6) west; thence south along the west boundary line of said township eleven (11) north, range six (6) west to the southwest corner thereof; thence east along the south boundary line of said township (11) north, range six (6) west to the summit of the main range of the Rocky mountains; thence southeasterly along the said crest of the Rocky mountains to the head of Ten Mile creek; thence along the divide between Ten Mile creek and the waters of the North Boulder to the divide between the waters of Lump Gulch and Ten Mile creek; thence along said divide between the waters of Grizzly Gulch and Lump Gulch to the divide between the waters that come into Dry Gulch above Helena and the waters of Prickly Pear creek to the north peak of the mountains southeasterly from Helena, known as Dry Gulch mountain; thence due east to the center of the channel of the Missouri river; thence along the middle of the main channel of the Missouri river to an intersection with the west boundary line of section thirty-two (32), township ten (10) north, range one (1) east; thence north along said line to its intersection with Cave Gulch; thence up the said Cave Gulch to the summit of the Big Belt mountains; thence along the summit of the said mountains to the southwest corner of township fourteen (14) north, range one (1) east; thence west along the south line of said township fourteen (14) north, to the southeast corner of township fourteen (14) north, range two (2) west; thence north along the east line of range two (2) west to the quarter corner of the east line of section twenty-four (24), township

sixteen (16) north, range two (2) west; thence running west on the mid-section lines to the east quarter ($\frac{1}{4}$) corner of section twenty (20), township sixteen (16) north, range two (2) west; thence south to the southeast corner of said section; thence west on the south line of said section to the southwest corner thereof; thence north along section line to the northwest corner thereof; thence west along the north line of section nineteen (19), township sixteen (16) north, range two (2) west, and the north line of section twenty-four (24), township sixteen (16) north, range three (3) west to its intersection with the center line of the middle of channel of the Dearborn river; thence up the middle of the main channel of the Dearborn river to its intersection with the Helena guide meridian; thence along the said Helena guide meridian to its intersection with Sun river, the place of beginning. The county seat is Helena, Montana.

History: Edgerton county created Feb. 2, 1865, Sec. 6, Bannack Stat., p. 530; boundaries established Nov. 21, 1867, L. 1867, p. 101; Lewis & Clark county, Sec. 6, Cod. Stat. 1871, p. 430; 5th Div. Rev. Stat. 1879, Sec. 328; 5th Div. Comp. Stat. 1887, Sec. 735; Cascade county created out of part of, Oct. 12, 1887, L. 1887, pp. 104-109; Sec. 4112, Pol. C. 1895; boundaries extended March 6, 1897, L. 1897, pp. 53-55; por-

tion of Deer Lodge added to, Feb. 28, 1899, L. 1899, pp. 44-47; portion of added to Powell, Ch. 106, L. 1903; spelling of name changed to Lewis and Clark, Ch. 13, L. 1905; Secs. 2794, 2795, 2797, 2799, 2837-2838, Rev. C. 1907; boundaries defined by Ch. 205, L. 1921; re-en. Sec. 4328, R. C. M. 1921; amd. Sec. 2, Ch. 58, L. 1941.

16-226. (4329) Liberty County. Beginning at a point on the international boundary line between the United States and the Dominion of Canada, where the range line between ranges three (3) and four (4) east, intersects said international boundary line; thence running south along the range line between said ranges three (3) and four (4) east, observing the offsets, jogs, and corrections, a distance of about fifty-four (54) miles, to the southwest corner of section thirty-one (31), township twenty-nine (29) north, range four (4) east, being the point where the range line between said ranges three (3) east and four (4) east intersects the township line between townships twenty-eight (28) and twenty-nine (29) north, and from said point running due west along the township line between townships twenty-eight (28) and twenty-nine (29) north, a distance of six (6) miles, to the southwest corner of section thirty-one (31), township twenty-nine (29) north, range three (3) east; running thence south along the range line between ranges two (2) and three (3) east, a distance of six (6) miles to the southwest corner of section thirty-one (31), township twenty-eight (28) north, range three (3) east; thence running due east along the range line between townships twenty-seven (27) north, and twenty-eight (28) north, a distance of about twenty-seven (27) miles to the southeast corner of section thirty-three (33), township twenty-eight (28) north, range seven (7) east; running thence north along the section line between the west half and the east half of township twenty-eight (28) north, range seven (7) east, a distance of six (6) miles to the northwest corner of section three (3), township twenty-eight (28) north, range seven (7) east; thence running due east along the township line between townships twenty-eight (28) and twenty-nine (29) north, a distance of three (3) miles to the southeast corner of section thirty-six (36), township twenty-nine (29) north, range seven (7) east, being the point where the township line between townships twenty-

eight (28) and twenty-nine (29) north intersects the range line between ranges seven (7) and eight (8) east, and from said point running due north along said line between ranges seven (7) and eight (8) east, observing the offsets, jogs, and corrections, a distance of about fifty-four (54) miles to the point where said range line intersects the international boundary between the United States and the Dominion of Canada; thence running west along said international boundary line, a distance of twenty-four (24) miles to the point of beginning, and which said county shall include townships twenty-nine (29) to thirty-seven (37) north, inclusive of ranges four (4), five (5), six (6), and seven (7) east, inclusive, and townships twenty-eight (28) north, ranges three (3), four (4), five (5), and six (6) east, inclusive, and the west half of township twenty-eight (28) north, range seven (7) east. The county seat is Chester, Montana.

History: County created by petition boundaries defined by Ch. 205, L. 1921; and election, effective Feb. 11, 1920, from re-en. Sec. 4329, R. C. M. 1921. portions of Hill and Chouteau counties;

16-227. (4330) Lincoln County. Beginning at the southeast corner of section twelve (12), township twenty-six (26) north, range twenty-seven (27) west; and running thence west about seven (7) miles on section lines to an intersection with the summit of the watershed dividing the waters flowing into the Kootenai and Clarks Fork of the Columbia river, and commonly designated the Cabinet range of mountains; thence first southerly and thence in a westerly and northerly direction along the crest or summit of said watershed to the point of intersection with the state boundary line between Montana and Idaho; thence north along said state boundary line to the northwest corner of Montana; thence east along the international boundary line to the point of intersection with the summit of the watershed dividing the Kootenai and Stillwater drainage on the west and the Flathead and Whitefish drainage on the east; thence in a southeasterly direction along the summit of said watershed to the point of intersection of said watershed with the north township line of township thirty-three (33) north, extended; thence west along said township line about twelve (12) miles to the northeast corner of township thirty-three (33) north, range twenty-six (26) west; thence south along the Horse Plains guide meridian to the southeast corner of township thirty-three (33) north, range twenty-six (26) west; thence east to the northeast corner of township thirty-two (32) north, range twenty-six (26) west; thence south along the Horse Plains guide meridian to the southeast corner of township twenty-nine (29) north, range twenty-six (26) west; thence west to the northwest corner of section three (3), township twenty-eight (28) north, range twenty-seven (27) west; thence south to the southwest corner of section thirty-four (34), township twenty-eight (28) north, range twenty-seven (27) west; thence east to the northwest corner of section six (6), township twenty-seven (27) north, range twenty-six (26) west; thence south to the place of beginning. The county seat is Libby, Montana.

History: County created from portion of Flathead county by Ch. 133, L. 1909, effective July 1, 1909; boundaries changed by Ch. 46, L. 1913; boundaries defined by Ch. 205, L. 1921; re-en. Sec. 4330, R. C. M. 1921.

16-228. (4331) Madison County. Beginning at the southeast corner of section sixteen (16), township five (5), south, range seven (7), west; thence south to the southwest corner of section thirty-four (34), township five (5) south, range seven (7) west, said corner being a monument on the first standard parallel south; thence east on said parallel to the northwest corner of section three (3), township six (6) south, range seven (7) west; thence south eighteen (18) miles to a point which, when surveyed, will be the northwest corner of section three (3), township nine (9) south, range seven (7) west; thence east six (6) miles, more or less, to the northeast corner of section four (4), township nine (9) south, range six (6) west; thence south six (6) miles, more or less, to the northeast corner of section four (4), township ten (10) south, range six (6) west; thence east seven (7) miles, more or less, to the northeast corner of section three (3), township ten (10) south, range five (5) west; thence south six (6) miles, more or less, to the southeast corner of section thirty-four (34), township ten (10) south, range five (5) west; thence east to the northwest corner of section one (1), township eleven (11) south, range five (5) west; thence south six (6) miles, more or less, to a point which, when surveyed, will be the southeast corner of section thirty-five (35), township eleven (11), south, range five (5) west; thence east five (5) miles to a point which, when surveyed, will be the northeast corner of section three (3), township twelve (12) south, range four (4) west; thence south three (3) miles, to a point which, when surveyed, will be the northeast corner of section twenty-two (22), township twelve (12) south, range four (4) west; thence east fourteen (14) miles, more or less, to a point which, when surveyed, will be the northeast corner of section twenty-four (24), township twelve (12), south, range two (2) west; thence south five (5) miles, more or less, to the northeast corner of section thirteen (13), township thirteen (13) south, range two (2) west; thence east sixteen (16) miles, more or less, following the section lines to the point of intersection with the boundary line between Montana and Idaho at the top of the divide of the main range of the Rocky mountains; thence in a general northeasterly course five (5) miles, more or less, following along the top of said divide of the main range of the Bitter Root mountains to an intersection of the summit of said divide with what will be, when it is surveyed, a line two (2) miles east of the west line of township thirteen (13) south, range three (3) east; thence northerly along said line to the southwest corner of section thirty-three (33), township nine (9) south, range three (3) east; thence north along the section line to the northwest corner of section four (4), township eight (8) south, range three (3) east; thence along what will be, when surveyed, the west line of sections thirty-three (33), twenty-eight (28), twenty-one (21), sixteen (16), nine (9), and four (4), township seven (7) south, range three (3) east, to the southwest corner of section thirty-three (33), township six (6) south, range three (3) east; thence north along the section lines to the northwest corner of section nine (9), township six (6) south, range three (3) east; thence north to what will be, when surveyed, the northwest corner of section four (4), township six (6) south, range three (3) east; thence east along the first standard parallel south to what will be, when surveyed, the southwest corner of section

thirty-four (34), township five (5) south, range three (3) east; thence north along what will be when surveyed, the west line of sections thirty-four (34), twenty-seven (27), twenty-two (22), fifteen (15), ten (10), and three (3), to the northwest corner of section three (3), township five (5) south, range three (3) east; thence north along the section line to the southwest corner of section twenty-two (22), township two (2) south, range three (3) east; thence west along the section line to the southwest corner of section nineteen (19), township two (2) south, range two (2) east; thence north to the southeast corner of section thirteen (13); thence west to the southwest corner of section thirteen (13); thence north to the northwest corner of section thirteen (13); thence west to the southwest corner of section eleven (11); thence north to the northwest corner of section eleven (11); thence west to the southwest corner of section three (3); thence north to the northwest corner of section three (3); all in township two (2) south, range one (1) east; thence west to the southwest corner of section thirty-three (33); thence north to the northwest corner of section thirty-three (33); thence west to the southwest corner of section twenty-nine (29); thence north to the northwest corner of section twenty-nine (29); thence west to the southwest corner of section nineteen (19); thence north to the northwest corner of section nineteen (19); all in township one (1) south, range one (1) east; thence west along the section line to the southwest corner of section fifteen (15); thence north along the section line to the northwest corner of section ten (10); thence west along the section line to the southwest corner of section five (5); thence north to the northwest corner of section five (5); thence west along the north line of section six (6) to the northwest corner thereof, all in township one (1) south, range one (1) west; thence west along the south line of section thirty-six (36), township one (1) north, range two (2) west, to the southwest corner thereof; thence north along the west line of said section thirty-six (36) to a point in the center of the main channel of the Jefferson river; thence following the center of the channel of the Jefferson river in a general westerly direction to the site of Parson's bridge on said Jefferson river; thence in a westerly direction on a straight line to the top of Table mountain; thence in a straight line to the right-hand fork of Camp creek; thence in a southwesterly direction down said Camp creek, following the center of the channel to a point in the center of the channel of the Big Hole river opposite the center of the mouth of Camp creek; thence in a southerly direction following the center of the channel of said Big Hole river to its intersection with the west line of section thirty-two (32), township four (4) south, range seven (7) west; thence southeasterly in a straight line to the southeast corner of section sixteen (16), township five (5) south, range seven (7) west, and place of beginning. The county seat is Virginia City, Montana.

History: County created Feb. 2, 1865, Bannack Stat., p. 529 (see Ch. XXII of Second Ter. Ses.); boundaries established Dec. 10, 1867, L. 1867, p. 102; N. and N.W. boundary established Jan. 12, 1869, L. 1869, p. 105; Sec. 4, Cod. Stat. 1871, p. 430; territory added Feb. 7, 1874, L. 1874,

p. 68; Sec. 636, 5th Div. Rev. Stat. 1879; Sec. 733, 5th Div. Comp. Stat. 1887; Sec. 4110, Pol. C. 1895; Sec. 2792, Rev. C. 1907; boundaries changed by Ch. 73, L. 1911 and by Ch. 60, L. 1913; boundaries defined by Ch. 205, L. 1921; re-en. Sec. 4331, R. C. M. 1921.

16-229. (4332) McCone County. Beginning at the point of intersection of the range line between ranges fifty (50) and fifty-one (51) east, at the center of the main channel of the Missouri river; running thence south along the range line between ranges fifty (50) and fifty-one (51) east, to the north line of township twenty-four (24) north, range fifty-one (51) east; thence west along the north line of township twenty-four (24) north, to the northeast corner of township twenty-four (24) north, range fifty (50) east; thence south along the range line between ranges fifty (50) and fifty-one (51) east, to the southeast corner of township twenty-four (24) north, range fifty (50) east; thence west along the north line of township twenty-three (23) north, to the northwest corner of township twenty-three (23) north, range fifty (50) east; thence south along the range line between ranges forty-nine (49) and fifty (50) east, to the southeast corner of township twenty-one (21) north, range forty-nine (49) east; thence west along the north line of township twenty (20) north, to the northwest corner of township twenty (20) north, range fifty (50) east; thence south along the range lines between ranges forty-nine (49) and fifty (50) east, to the north line of township sixteen (16) north, being the southeast corner of township seventeen (17) north, range forty-nine (49) east; thence west along the north line of township sixteen (16) north, to the northwest corner of township sixteen (16) north, range forty-seven (47) east; thence south along the range line between ranges forty-six (46) and forty-seven (47), to the southeast corner of township sixteen (16) north, range forty-six (46) east; thence west along the north line of township fifteen (15), to the southeast corner of township sixteen (16) north, range forty-five (45) east; thence north along the range line between ranges forty-five (45) and forty-six (46) east, to the northeast corner of township sixteen (16) north, range forty-five (45) east; thence west along the north line of township sixteen (16) north, to the southwest corner of township seventeen (17) north, range forty-four (44) east; thence north along the range line between ranges forty-three (43) and forty-four (44) east, to the northeast corner of township eighteen (18) north, range forty-three (43) east; thence west along the north line of township eighteen (18) north, to the southwest corner of township nineteen (19) north, range forty-three (43) east; thence north along the range line between ranges forty-two (42) and forty-three (43), to the point of intersection of said range line with the north line of township twenty (20) north; thence east along the north line of township twenty (20) north, to the point of intersection with the range line between ranges forty-two (42) and forty-three (43) east; thence north along the range line between ranges forty-two (42) and forty-three (43) east, to the northeast corner of township twenty-four (24) north, range forty-two (42) east; thence west along the north line of township twenty-four (24) to the southwest corner of township twenty-five (25) north, range forty-two (42) east; thence north along the range line between ranges forty-one (41) and forty-two (42) east to the southwest corner of township twenty-six (26) north, range forty-two (42) east; thence west along the north line of township twenty-five (25) north, to the point of intersection with the center of the present main channel of the Missouri river; thence

in a northerly and easterly direction along the center of the main channel of the Missouri river to the place of beginning. The county seat is Circle, Montana.

History: County created by Ch. 33, L. 1919, effective April 1, 1919, from portions of Dawson and Richland. Boundaries defined by Ch. 205, L. 1921; re-en. Sec. 4332, R. C. M. 1921.

16-230. (4333) Meagher County. Beginning at the northwest corner of section six (6), township thirteen (13) north, range two (2) east; thence west six (6) miles, more or less, to the top of the main divide of the Big Belt mountains; thence on a line following a general southeasterly direction on the crest of the range to the point where said main divide intersects an east and west line dividing the north from the south half of sections thirteen (13), fourteen (14), fifteen (15), township five (5) north, range five (5) east; thence east on said line to the quarter corner of the east line of said section thirteen (13); thence continuing east on the half section line that divides the north from the south half of sections eighteen (18), seventeen (17), sixteen (16), fifteen (15), fourteen (14), and thirteen (13), in township five (5) north, ranges six (6), seven (7), eight (8), nine (9), ten (10), and eleven (11) east, to the quarter corner on the east line of section thirteen (13), township five (5) north, range eleven (11) east; thence north on the line between ranges eleven (11) and twelve (12) east, to the second standard parallel north; thence east along said standard parallel to the southeast corner of township nine (9) north, range eleven (11) east; thence north along the line between ranges eleven (11) and twelve (12) east, to the crest of the Little Belt mountains; thence along the crest of the Little Belt mountains in a general northwesterly direction to an intersection with the south line of township sixteen (16) north, range five (5) east; thence west to the southwest corner of township sixteen (16) north, range five (5) east; thence south to the southeast corner of township fifteen (15) north, range four (4) east; thence west to the northwest corner of section six (6), township fourteen (14) north, range two (2) east; thence south to the northwest corner of section six (6), township thirteen (13) north, range two (2) east, and place of beginning. The county seat is White Sulphur Springs, Montana.

History: County created Nov. 16, 1867, L. 1867, p. 99; Sec. 7, Cod. Stat. 1871, p. 431; boundaries changed Feb. 13, 1874, L. 1874, p. 66; boundaries changed Feb. 9, 1876, L. 1876, p. 48; Sec. 329, 5th Div. Rev. Stat. 1879; boundaries changed Feb. 7, 1883, L. 1883, p. 33; Fergus county created out of, March 12, 1885, L. 1885, pp. 78-83; Sec. 736, 5th Div. Comp. Stat. 1887; Cascade county created out of part of, Sept. 12, 1887, Ex. L. 1887, pp. 104-109; Secs. 4113, 4135, Pol. C. 1895; Sweet Grass county created, including part of, March 5, 1895, L. 1895, pp. 54-58, and portion of added to Yellowstone by Sec. 8, supra;

Broadwater county created, including part of, Feb. 9, 1897, L. 1897, pp. 45-49; portion added to Cascade county, March 1, 1897, L. 1897, pp. 50-52; portion added to Lewis and Clark, March 6, 1897, L. 1897, pp. 53-55; T. 15 N., R. 4 E., added to Cascade county, March 6, 1899, L. 1899, p. 43; Secs. 2800, 2796, 2816, 2833, 2835, Rev. C. 1907; boundaries established, Sec. 16, Ch. 25, L. 1911; boundaries changed, Ch. 60, L. 1913; Wheatland county created, including part of, Ch. 55, L. 1917; boundaries defined by Ch. 205, L. 1921; re-en. Sec. 4333, R. C. M. 1921.

16-231. (4334) Mineral County. Beginning at the intersection of the divide between the St. Regis and Clarks Fork of the Columbia river with the Idaho-Montana line; thence running in an easterly and southeasterly

direction, following said divide to its intersection with the west line of township nineteen (19) north, range twenty-six (26) west, running thence south on the line between ranges twenty-six (26) and twenty-seven (27) west, to the southwest corner of section eighteen (18), township eighteen (18) north, range twenty-six (26) west; running thence east along the section line to the northeast corner of section twenty-one (21), township eighteen (18) north, range twenty-six (26) west; running thence south one (1) mile to the southeast corner of said section twenty-one (21); thence east three (3) miles, following the section line to the northeast corner of section twenty-five (25), township eighteen (18) north, range twenty-six (26) west; thence running south to the southeast corner of section thirty-six (36), said township and range; thence running east to the northeast corner of section five (5), township seventeen (17) north, range twenty-five (25) west; thence running south to the southwest corner of section nine (9), township seventeen (17) north, range twenty-five (25) west; thence running east to the southeast corner of said section nine (9); thence running south to the southwest corner of section fifteen (15), township seventeen (17) north, range twenty-five (25) west; thence running east to the northeast corner of section twenty-four (24) township seventeen (17) north, range twenty-five (25) west; thence running south to the southeast corner of section thirty-six (36), township seventeen (17) north, range twenty-five (25) west; thence running east to the northeast corner of section one (1), township sixteen (16) north, range twenty-five (25) west; thence running south to the southeast corner of said section one (1); thence running east to the northeast corner of section eight (8), township sixteen (16) north, range twenty-four (24) west; thence running south to the southeast corner of section seventeen (17), township sixteen (16) north, range twenty-four (24) west; thence running east to the northeast corner of section twenty-one (21), township sixteen (16) north, range twenty-four (24) west, thence running south to the southeast corner of said section twenty-one (21); thence running east to the northeast corner of section twenty-six (26), township sixteen (16) north, range twenty-four (24) west; thence running south to the southwest corner of section thirty-six (36), township sixteen (16) north, range twenty-four (24) west; thence running east to the southeast corner of said section thirty-six (36); thence running south to the southwest corner of section seven (7), township fifteen (15) north, range twenty-three (23) west; thence running east to the northeast corner of section fifteen (15), township fifteen (15) north, range twenty-three (23) west; thence running south to the southwest corner of section twenty-six (26), township fifteen (15) north, range twenty-three (23) west; thence running east to the northeast corner of section thirty-one (31), township fifteen (15) north, range twenty-two (22) west; thence running south to the southeast corner of said section thirty-one (31); thence running west to the quarter corner on the north line of section one (1), township fourteen (14) north, range twenty-three (23) west; thence running south to an intersection with the center of the channel of the Missoula river; thence running in a northwesterly direction, following the center of the channel of the Missoula river, to its intersection with the line dividing townships

fourteen (14) and fifteen (15) north; thence running west to the northeast corner of section five (5), township fourteen (14) north, range twenty-three (23) west; thence running south to the southeast corner of said section five (5); thence running west to the southwest corner of said section five (5); thence running south to the southeast corner of section eighteen (18), township fourteen (14) north, range twenty-three (23) west; thence running west to the southwest corner of said section eighteen (18); said point being on the Lo Lo guide meridian; thence running south along the Lo Lo guide meridian to the third standard parallel north; thence running east to the northeast corner of section one (1), township twelve (12) north, range twenty-four (24) west; thence running south to the southeast corner of section thirty-six (36), township twelve (12) north, range twenty-four (24) west; thence running west to the northwest corner of section six (6), township eleven (11) north, range twenty-four (24) west; thence running south to the Montana-Idaho state line; thence running in a northwesterly direction, following the Montana-Idaho state line, to the place of beginning. The county seat is Superior, Montana.

History: County created by petition and election, effective Aug. 7, 1914, from portion of Missoula county; boundaries defined by Ch. 205, L. 1921; re-en. Sec. 4334, R. C. M. 1921.

16-232. (4335) Missoula County. Beginning at the intersection of the center of the channel of the Flathead river with the south line of the north tier of sections of township twenty-one (21) north; running thence southerly along the center of the main channel of the said Flathead or Pend d'Oreille river to its intersection with the south boundary line of township nineteen (19) north, range twenty-one (21) west, said point being approximately two (2) miles east of the southwest corner of said township; thence east on the line between townships eighteen (18) and nineteen (19) north, to the point where said line intersects the line between ranges twenty (20) and twenty-one (21) west; thence south on said line between ranges twenty (20) and twenty-one (21) west, to the summit of the range of mountains commonly called the Coeur d'Alene, said mountains dividing the waters of the Missoula and Pend d'Oreille or Flathead rivers; thence westerly along said summit of the Coeur d'Alene mountains, to a point where said summit intersects the summit of the watershed dividing the waters of the Missoula and Clarks Fork rivers; thence westerly along said summit dividing the waters of the Missoula and Clarks Fork rivers to the northeast corner of section five (5), township seventeen (17) north, range twenty-five (25) west; thence running south to the southwest corner of section nine (9), township seventeen (17) north, range twenty-five (25) west; thence running east to the southeast corner of said section nine (9); thence running south to the southwest corner of section fifteen (15), township seventeen (17) north, range twenty-five (25) west; thence running east to the northeast corner of section twenty-four (24); township seventeen (17) north, range twenty-five (25) west; thence running south to the southeast corner of section thirty-six (36), township seventeen (17) north, range twenty-five (25) west; thence running east to the northeast corner of section one (1), township sixteen (16) north, range twenty-five (25) west; thence running

south to the southeast corner of said section one (1); thence running east to the northeast corner of section eight (8), township sixteen (16) north, range twenty-four (24) west; thence running south to the southeast corner of section seventeen (17), township sixteen (16) north, range twenty-four (24) west; thence running east to the northeast corner of section twenty-one (21), township sixteen (16) north, range twenty-four (24) west; thence running south to the southeast corner of said section twenty-one (21); thence running east to the northeast corner of section twenty-six (26), township sixteen (16) north, range twenty-four (24) west; thence running south to the southwest corner of section thirty-six (36), township sixteen (16) north, range twenty-four (24) west; thence running east to the southeast corner of said section thirty-six (36); thence running south to the southwest corner of section seven (7), township fifteen (15) north, range twenty-three (23) west; thence running east to the northeast corner of section fifteen (15), township fifteen (15) north, range twenty-three (23) west; thence running south to the southwest corner of section twenty-six (26), township fifteen (15) north, range twenty-three (23) west; thence running east to the northeast corner of section thirty-one (31), township fifteen (15) north, range twenty-two (22) west; thence running south to the southeast corner of said section thirty-one (31); thence running west to the quarter corner on the north line of section one (1), township fourteen (14) north, range twenty-three (23) west; thence running south to an intersection with the center of the channel of the Missoula river; thence running in a northwesterly direction, following the center of the channel of the Missoula river to its intersection with the line dividing townships fourteen (14) and fifteen (15) north; thence running west to the northeast corner of section five (5), township fourteen (14) north, range twenty-three (23) west; thence running south to the southeast corner of said section five (5); thence running west to the southwest corner of said section five (5); thence running south to the southeast corner of section eighteen (18), township fourteen (14) north, range twenty-three (23) west; thence running west to the southwest corner of said section eighteen (18); said point being on the Lo Lo guide meridian; thence running south on the Lo Lo guide meridian to the third standard parallel north; thence running east to the northeast corner of section one (1), township twelve (12) north, range twenty-four (24) west; thence running south to the southeast corner of section thirty-six (36), township twelve (12) north, range twenty-four (24) west; thence running west to the northwest corner of section six (6), township eleven (11) north, range twenty-four (24) west; thence running south to the Montana-Idaho state line; thence running in a general southeasterly direction following said line to the intersection with the south line of township eleven (11) north, range twenty-two (22) west; thence running east along the line between townships ten (10) and eleven (11) north, to an intersection with the center of the channel of Rock creek; thence running in a northerly direction following down the center of the channel of Rock creek to the center of the channel of the Hell Gate river; thence running in an easterly direction up the center of the old original channel of said river as the same existed at the time of the creation of Missoula county,

to an intersection with a line projected due north from the top of Medicine Tree hill, said natural monument being located in township eleven (11) north, range fifteen (15) west; thence running north along said line to the top of the divide between the Hell Gate and Blackfoot rivers; thence running in an easterly direction following the summit of said divide to its intersection with the east line of township twelve (12) north, range fourteen (14) west; thence running north along the line between ranges thirteen (13) and fourteen (14) west, observing the offsets and corrections thereto to the northeast corner of township sixteen (16) north, range fourteen (14) west; thence running west along the fourth standard parallel north to an intersection with a line heretofore described as being projected due north from the top of Medicine Tree hill; thence running north along said line to an intersection with the south line of the north tier of sections of township twenty-one (21) north, range fifteen (15) west; thence running west along the south line of the north tier of sections of township twenty-one (21) north to the place of beginning. The county seat is Missoula, Montana.

History: County created Feb. 2, 1865, Bannack Stat., p. 528; boundaries established Nov. 20, 1867, L. 1867, p. 105; Sec. 1, Cod. Stat. 1871, p. 428; Sec. 323, 5th Div. Rev. Stat. 1879; Sec. 730, 5th Div. Comp. Stat. 1887; Flathead county created out of, Feb. 6, 1893, L. 1893, pp. 198-201; Teton county created from part of, Feb. 7, 1893, L. 1893, pp. 205-209; Granite county created from part of, March 2, 1893, L. 1893, pp. 212-217; Ravalli county created out of, Feb. 16, 1893, L. 1893, p. 212; Secs. 4107, 4124, 4128, 4130, 4132, Pol. C. 1895; Sanders county created out of, Ch. 9, L. 1905; Secs. 2788, 2821, 2826, 2828,

2830, 2843, Rev. C. 1907; boundaries changed, Ch. 54, L. 1911; boundaries changed, Ch. 42, L. 1913; Mineral county detached, Aug. 7, 1914; part of Powell county added, Feb. 27, 1915, Ch. 46, L. 1915; boundaries defined by Ch. 205, L. 1921; re-en. Sec. 4335, R. C. M. 1921.

NOTE.—See Sec. 16-220. The latter section as amended by Ch. 223, Laws 1943 affects the boundaries of Missoula County.

References

State v. Cates, 97 M 173, 189, 33 P 2d 578.

16-233. (4336) Musselshell County. Beginning at the point where the center of the channel of the Musselshell river intersects the north line of township eleven (11) north, range thirty-one (31) east, and thence west to the northwest corner of township eleven (11) north, range twenty-two (22) east; thence south nine (9) miles to the southeast corner of section thirteen (13) in township ten (10) north, range twenty-one (21) east; thence east one (1) mile to the northeast corner of section nineteen (19), township ten (10) north, range twenty-two (22) east; thence south three (3) miles to the southeast corner of section thirty-one (31), township ten (10) north, range twenty-two (22) east; thence east four (4) miles to the northeast corner of section two (2), township nine (9) north, range twenty-two (22) east; thence south six (6) miles to the southeast corner of section thirty-five (35), township nine (9) north, range twenty-two (22) east; thence east along the township line about one (1) mile and twelve (12) chains to the northeast corner of section six (6), township eight (8) north, range twenty-three (23) east; thence south to the southeast corner of section seven (7), township eight (8) north, range twenty-three (23) east; thence east one (1) mile to the northeast corner of section seventeen (17), township eight (8) north, range twenty-three (23) east; thence south six (6) miles to the southeast corner of section eight (8), township seven

(7) north, range twenty-three (23) east; thence east one (1) mile to the northeast corner of section sixteen (16), township seven (7) north, range twenty-three (23) east; thence south one (1) mile to the southeast corner of section sixteen (16), township seven (7) north, range twenty-three (23) east; thence east one-half ($\frac{1}{2}$) mile to the north quarter ($\frac{1}{4}$) corner of section twenty-two (22), township seven (7) north, range twenty-three (23) east; thence south two miles to the south quarter ($\frac{1}{4}$) corner of section twenty-seven (27), township seven (7) north, range twenty-three (23) east; thence east one-half ($\frac{1}{2}$) mile to the northeast corner of section thirty-four (34), township seven (7) north, range twenty-three (23) east; thence south one (1) mile to the southeast corner of section thirty-four (34), township seven (7) north, range twenty-three (23) east; thence east one (1) mile to the northeast corner of section two (2), township six (6) north, range twenty-three (23) east; thence south two (2) miles to the southeast corner of section eleven (11), township six (6) north, range twenty-three (23) east; thence east one (1) mile to the northeast corner of section thirteen (13), township six (6) north, range twenty-three (23) east; thence south ten (10) miles to the southeast corner of section thirty-six (36), township five (5) north, range twenty-three (23) east; thence east to the southeast corner of township five (5) north, range twenty-six (26) east; thence north to the southwest corner of section thirty (30), township six (6) north, range twenty-seven (27) east; thence east to the southeast corner of section twenty-nine (29), township six (6) north, range twenty-seven (27) east; thence north to the southeast corner of section twenty (20), township six (6) north, range twenty-seven (27) east; thence east to the southeast corner of section twenty-two (22) of township six (6) north, range twenty-seven (27) east; thence north to the northeast corner of section twenty-two (22), township six (6) north, range twenty-seven (27) east; thence east to the southeast corner of section thirteen (13), township six (6) north, range twenty-nine (29) east; thence north to the northeast corner of township six (6) north, range twenty-nine (29) east; thence east to the southeast corner of section thirty-one (31), township seven (7) north, range thirty (30) east; thence north to the southwest corner of section twenty (20), township seven (7) north, range thirty (30) east; thence east to the southeast corner of said section twenty (20); thence north to the northeast corner of said section twenty (20); thence east to the southeast corner of section sixteen (16), township seven (7) north, range thirty (30) east; thence north to the northeast corner of said section sixteen (16); thence east to the southeast corner of section ten (10), township seven (7) north, range thirty (30) east; thence north to the northeast corner of said section ten (10); thence east to the southeast corner of section two (2), township seven (7) north, range thirty (30) east; thence north to the northeast corner of said section two (2); thence east to the southeast corner of township eight (8) north, range thirty-one (31) east; thence north along the line between ranges thirty-one (31) and thirty-two (32) east to the second standard parallel north; thence west along said standard parallel to the southeast corner of section thirty-four (34), township nine (9) north, range thirty-one (31) east; thence north along the east line of sections thirty-four (34),

twenty-seven (27), twenty-two (22), fifteen (15), ten (10) and three (3) said township nine (9) north, range thirty-one (31) east, and the east line of section thirty-four (34), township ten (10) north, range thirty-one (31) east to the southwest corner of section twenty-six (26), township ten (10) north, range thirty-one (31) east; thence west along the south line of sections twenty-seven (27) and twenty-eight (28), said township and range, to the center of the channel of the Musselshell river; thence in a northerly direction following the center of the channel of said Musselshell river to the place of beginning. The county seat is Roundup, Montana.

History: County created out of Fergus and Yellowstone, Ch. 25, L. 1911, effective March 1, 1911; boundary line with Rosebud county changed by Ch. 108, L. 1917, effective Feb. 28, 1917; portion detached by creation of Golden Valley county, Oct. 4, 1920; boundaries defined by Ch. 205, L. 1921; re-en. Sec. 4336, R. C. M. 1921.

16-234. (4337) Park County. Beginning at the southwest corner of section thirty-five (35), township seven (7) south, range twelve (12) east, and running thence north along the west boundaries of sections thirty-five (35), twenty-six (26), twenty-three (23), fourteen (14), eleven (11) and two (2) of said township seven (7) south, range twelve (12) east, continuing north along the west boundaries of sections thirty-five (35), twenty-six (26), twenty-three (23), fourteen (14), eleven (11) and two (2) of township six (6) south, range twelve (12) east, to the first standard parallel south; thence east along said first parallel south to the southwest corner of section thirty-five (35), township five (5) south, range twelve (12) east; thence north along the west boundary of sections thirty-five (35), twenty-six (26), twenty-three (23), fourteen (14), eleven (11) and two (2) in each of townships five (5), four (4), three (3), two (2) and one (1), respectively, range twelve (12) east to the northwest corner of section two (2), township one (1) south, range twelve (12) east; thence west along the base line to the line between ranges eleven (11) and twelve (12) east; thence north along the line between ranges eleven (11) and twelve (12) east to the quarter corner on the east line of section thirteen (13), township five (5) north, range eleven (11) east; thence west along the half section line through the center of sections thirteen (13), fourteen (14), fifteen (15), sixteen (16), seventeen (17) and eighteen (18), township five (5) north, ranges eleven (11), ten (10), nine (9) and eight (8) east to the quarter corner on the west line of section eighteen (18), township five (5) north, range eight (8) east; thence south along the township line to the southeast corner of township five (5) north, range seven (7) east; thence west along the first standard parallel north to the northeast corner of township four (4) north, range seven (7) east, thence south along the range line between ranges seven (7) and eight (8) east to the southeast corner of township one (1) north, range seven (7) east; thence west along the base line to the northeast corner of township one (1) south, range seven (7) east; thence south along the township line to the east quarter corner of section twelve (12), township three (3) south, range seven (7) east; thence west through the center of sections twelve (12), eleven (11) and ten (10) to the east quarter corner of section nine (9); thence south along the section line to the southeast corner of section thirty-three (33), township three (3) south, range seven (7) east; thence west to the southeast corner of township three (3) south, range six (6) east; thence south

to what will be, when the same is surveyed, the southwest corner of township five (5) south, range seven (7) east; thence west to what will be, when the same is surveyed, the northwest corner of township six (6) south, range six (6) east; thence south along what will be the township line, when the same is surveyed, to the north boundary of the Yellowstone national park, and thence east along the north boundary line of the Yellowstone national park to the northeast corner thereof; thence south along the east boundary line of the Yellowstone national park to an intersection with the boundary line between Montana and Wyoming; thence east along said boundary line between Montana and Wyoming to an intersection with the line between ranges fifteen (15) and sixteen (16) east; thence north along the line between ranges fifteen (15) and sixteen (16) east; to the northeast corner of township eight (8) south, range fifteen (15) east; thence west along the line between townships seven (7) and eight (8), south to the place of beginning. The county seat is Livingston, Montana.

History: County created Feb. 23, 1887, county created from part of, March 5, Comp. Stat. 1887, p. 1238, effective May 1, 1887; Secs. 4121, 4135, Pol. C. 1895; Carbon county created out of part of, March 5, 1895, L. 1895, pp. 49-54; Sweet Grass county created from part of, March 5, 1895, L. 1895, pp. 54-58; Secs. 2812, 2833, Rev. C. 1907; boundaries changed by Ch. 60, L. 1913; boundaries defined by Ch. 205, L. 1921; re-en. Sec. 4337, R. C. M. 1921.

16-235. (4337.1) Petroleum County. Beginning at a point at the middle of the main channel of the Missouri river opposite the middle of the main channel of the Musselshell river, running thence up the middle of the main channel of the Musselshell river to its intersection with the township line between townships 11 and 12 north; thence west along said township line to the range line between ranges 24 and 25 east, which is the southwest corner of township 12 north of range 25 east of the Montana principal meridian; thence north to the northwest corner of said township; thence east to the southwest corner of township 13 north of range 25 east of the Montana principal meridian; thence north to the southeast corner of township 16 north of range 24 east, Montana principal meridian; thence west to the southwest corner of said township and range; thence north to the northwest corner of said township and range; thence east to the southwest corner of township 17 north of range 24 east; thence north to the northwest corner of said township and range; thence east to the southwest corner of township 18 north of range 25 east; thence north approximately $2\frac{1}{2}$ miles to the quarter corner on the west side of section 19 in township 18 north of range 25 east; thence east along the median line a distance of approximately twelve miles to the quarter corner on the east line of section 24 in township 18 north of range 26 east; thence north approximately one-half mile to the southwest corner of section 18 in township 18 north of range 27 east; thence east to the southeast corner of said section in said township and range approximately one mile; thence north approximately 15 miles to the northeast corner of section 6 in township 20 north of range 27 east; thence along the township line between townships 20 and 21 north to the southwest corner of township 21 north of range 27 east; thence north along the range line between ranges 26 and 27 east to the intersection of said range line with the middle of the main channel of the Missouri river; thence down stream along the middle

of the main channel of the Missouri river to the place of beginning. The city of Winnett, Montana, is hereby declared to be the county seat.

History: En. by resolution, effective February 22, 1925, p. 505, L. 1925.

16-236. (4338) Phillips County. Commencing at a point where the range line between ranges thirty-four (34) and thirty-five (35) east of the Montana meridian joins the international boundary line between the United States and Canada; thence running south about thirty (30) miles along said range line observing the offsets and corrections, to a point where said range line intersects the township line between townships thirty-two (32) and thirty-three (33) north; thence east along said township line about three-fourths ($\frac{3}{4}$) of a mile to a point on said township line where said line intersects the section line between sections four (4) and five (5), in township thirty-two (32) north, range thirty-five (35) east; thence south about four and one-half ($4\frac{1}{2}$) miles on the section line to a point where said section line intersects the center of the channel of the Milk river; thence westerly about three (3) miles along the center of the channel of Milk river to a point where the same intersects the section line between sections twenty-three (23) and twenty-four (24), in township thirty-two (32) north, range thirty-four (34) east; thence south about two (2) miles along the section line to a point where said section line intersects the township line between townships thirty-one (31) and thirty-two (32) north; thence west about two (2) miles along said township line to the section corner common to sections three (3) and four (4), in township thirty-one (31) north, range thirty-four (34) east; thence south about six (6) miles along the section line to a point where said section line intersects the township line between townships thirty (30) and thirty-one (31) north; thence east about two (2) miles on said township line to the northwest corner of section one (1), township thirty (30) north, range thirty-four (34) east; thence south about six (6) miles along the section line to a point where said section line intersects the township line between townships twenty-nine (29) and thirty (30) north; thence west about five (5) miles along said township line to a point where said township line intersects the range line between ranges thirty-three (33) and thirty-four (34) east; thence south about forty-three (43) miles along said range line; observing the offsets and corrections, to a point where said range line intersects the center of the channel of the Missouri river; thence westerly about one hundred and five (105) miles along the said center of the channel of the Missouri river to a point where the same intersects a north and south line through the center of township twenty-three (23) north, range twenty-two (22) east; thence north about eight (8) miles through the center of townships twenty-three (23) and twenty-four (24) north, range twenty-two (22) east to a point where said line intersects the township line between townships twenty-four (24) and twenty-five (25) north; thence east about three-fourths ($\frac{3}{4}$) of a mile on said township line to a point where said township line intersects the north and south line through the center of township twenty-five (25) north, range twenty-two (22) east; thence northerly along said north and south line through the center of township twenty-five (25) north, range twenty-two (22) east

about three and one-half ($3\frac{1}{2}$) miles to a point where said line intersects the south boundary line, or said south boundary line produced, of the Fort Belknap Indian reservation; thence easterly along the south boundary line of said reservation about eleven and one-half ($11\frac{1}{2}$) miles to a point where the south boundary of said reservation intersects the west boundary of the Jefferson national forest; thence northerly about five (5) miles along said west boundary line of said Jefferson national forest to the northwest corner of said Jefferson national forest; thence easterly about seven and one-half ($7\frac{1}{2}$) miles along the north boundary of said Jefferson national forest to a point where said boundary line, of the said boundary line produced, intersects the range line between ranges twenty-five (25) and twenty-six (26) east; thence northerly about thirty-two (32) miles, observing offsets and corrections, along the line between ranges twenty-five (25) and twenty-six (26) east to a point where said line intersects the center of the channel of the Milk river; thence easterly along the center of the channel of Milk river about six (6) miles to a point where the same intersects the section line between sections twenty-seven (27) and twenty-eight (28), in township thirty-one (31) north, range twenty-six (26) east; thence north about ten (10) miles along the section line through the center of township thirty-one (31) and thirty-two (32) north, range twenty-six (26) east to a point where said line intersects the township line between townships thirty-two (32) and thirty-three (33) north; thence east about one (1) mile on said township line to a point where said township line intersects a north and south line through the center of township thirty-three (33) north, range twenty-six (26) east; thence north about twelve (12) miles through the center of townships thirty-three (33) and thirty-four (34) north, range twenty-six (26) east, to a point where said line intersects the township line between townships thirty-four (34) and thirty-five (35) north; thence east on said township line about three (3) miles to a point where said township line intersects the range line between ranges twenty-six (26) and twenty-seven (27) east; thence north about eighteen (18) miles along said range line observing the offsets and corrections, to a point where said range line joins the international boundary line between the United States and Canada; thence easterly along said international boundary line about forty-eight (48) miles to the place of beginning. The county seat is Malta, Montana.

History: County created by petition and election, effective Feb. 5, 1915, from portion of Valley and Blaine counties; boundaries defined by Ch. 205, L. 1921; re-en. Sec. 4338, R. C. M. 1921.

16-237. (4339) Pondera County. Beginning at a point at the intersection of the line between township twenty-nine (29) and thirty (30) north with the summit of the main divide of the Rocky mountains; thence in an easterly direction on the township line between townships twenty-nine (29) and thirty (30) north, to the southeast corner of section thirty-six (36), township thirty (30) north, range eight (8) west; thence due north on the line between ranges seven (7) and eight (8) west to the northeast corner of section one (1), township thirty-one (31) north, range eight (8) west; thence in an easterly direction on the township line between townships thirty-one (31) and thirty-two (32) to a point where said town-

ship line intersects with the Marias river; thence following on down the center of the channel of the Marias river to its intersection with the section line between sections fifteen (15) and sixteen (16), township thirty-one (31) north, range three (3) west; thence south about three (3) miles to the southwest corner of section thirty-four (34), township thirty-one (31) north, range three (3) west; thence east about nine (9) miles to the northwest corner of section six (6), township thirty (30) north, range one (1) west; thence south about three (3) miles to the southwest corner of section eighteen (18), township thirty (30) north, range one (1) west; thence east about six (6) miles to the southeast corner of section thirteen (13), township thirty (30) north, range one (1) west; thence south about nine (9) miles to the southwest corner of section thirty-one (31), township twenty-nine (29) north, range one (1) east; thence due east along the boundary lines between townships twenty-eight (28) north and twenty-nine (29) north, to the northeast corner of township twenty-eight (28) north, range two (2) east; thence south along the boundary line between ranges two (2) and three (3) east, to the northeast corner of section twenty-five (25), township twenty-six (26) north, range two (2) east; thence due west along the section line to the southwest corner of section twenty-two (22), township twenty-six (26) north, range three (3) west; thence due north along the section line to the southwest corner of section thirty-four (34), township twenty-seven (27) north, range three (3) west; thence due west along the township line three (3) miles, to the southwest corner of section thirty-one (31), township twenty-seven (27) north, range three (3) west; thence due north along the township line three (3) miles to the southwest corner of section eighteen (18), township twenty-seven (27) north, range three (3) west; thence due west along the section line to the southwest corner of section eighteen (18), township twenty-seven (27) north, range four (4) west, a distance of six (6) miles; thence due north along the township line between ranges four (4) and five (5) west, a distance of three (3) miles to the southwest corner of section thirty-one (31), township twenty-eight (28) north, range four (4) west; thence due west along the line between township twenty-seven (27) north and twenty-eight (28) north, to a point where such line, if extended, would intersect the summit of the main range of the Rocky mountains; thence in a northwesterly direction along the summit of the main range of the Rocky mountains to the point of beginning. The county seat is Conrad, Montana.

History: County created by Ch. 22, L. 1919, effective April 1, 1919, from portions of Teton and Chouteau counties; boundaries defined by Ch. 205, L. 1921; re-enacted by Sec. 4339, R. C. M. 1921.

16-238. (4340) Powder River County. Beginning at the intersection of the Montana base line with the range line between ranges fifty-four (54) and fifty-five (55) east; thence due south along said range line to its intersection with the Montana-Wyoming state line; thence due west along the Montana-Wyoming state line to its intersection with the range line between ranges forty-four (44) and forty-five (45) east; thence due north along the range line between ranges forty-four (44) and forty-five (45) east to the point of intersection with the Montana base line; thence due

east along the Montana base line to the point of beginning. The county seat is Broadus, Montana.

History: County created by Ch. 141, L. 1919, effective April 1, 1919, from portion of Custer county; boundaries defined by Ch. 205, L. 1921; re-en. Sec. 4340, R. C. M. 1921. See also Secs. 16-239 and 16-240, establishing the boundary between Powder River and Carter counties.

16-239. (4340.1) Boundary line between Carter and Powder River counties established. That the boundary line between Powder River county and Carter county of the state of Montana, be, and the same is hereby established and defined and shall hereafter be known as follows:

Beginning at the intersection of the Montana base line with the range line between ranges 54½ east and 55 east thence due south along said line to the line between township one (1) south and township two (2) south; thence due east approximately one-half mile to the line between township 54 east and township 55 east thence due south along said range line to its intersection with the Montana-Wyoming state line.

History: En. Sec. 1, Ch. 45, L. 1929.

16-240. (4340.2) Alteration of boundaries of Carter and Powder River counties. The boundaries of Carter county are hereby altered to conform to the boundaries of Powder River county as established by this act.

History: En. Sec. 2, Ch. 45, L. 1929.

16-241. (4341) Powell County. Beginning at the southeast corner of section fourteen (14) in township six (6) north, range eight (8) west, and running thence west by section lines to an intersection with the line between ranges eleven (11) and twelve (12) west; thence north along said line to the intersection of the divide between the Hell Gate and Big Blackfoot rivers; thence northwesterly along the summit of said divide to an intersection of the line between ranges thirteen (13) and fourteen (14) west; thence due north along said line, observing the offsets and corrections thereto to the northwest corner of township sixteen (16) north, range thirteen (13) west; thence running west along the fourth standard parallel north to its intersection with a line extended due north from the summit of Medicine Tree hill; thence running north along said line to an intersection with the south line of the north tier of sections of township twenty-one (21) north; thence east along the south line of the north tier of sections of said township twenty-one (21) north to the summit of the main range of the Rocky mountains; thence southerly following the summit of the main range of the Rocky mountains to the point where said summit is intersected by the west boundary line of range eleven (11) west; thence south along the west boundary line of townships twenty (20), nineteen (19), eighteen (18) and seventeen (17), north of said range eleven (11) west to the southwest corner of township seventeen (17) north, range eleven (11) west; thence east along the south boundary of township seventeen (17) north, ranges eleven (11) and ten (10) west, to the northwest corner of township sixteen (16) north, range nine (9) west; thence south along the west line of townships sixteen (16), fifteen (15), fourteen (14) and thirteen (13) north, range nine (9) west to the southwest corner of township thirteen (13) north, range nine (9) west; thence east

along the south boundary line of township thirteen (13) north of ranges nine (9) and eight (8) west to the northwest corner of township twelve (12) north, range seven (7) west; thence south along the west boundary line of townships twelve (12) and eleven (11) north, range seven (7) west to the corner between sections eighteen (18) and nineteen (19) of said township eleven (11) north of range seven (7) west; thence east along the south boundary lines of sections eighteen (18), seventeen (17), sixteen (16), fifteen (15), fourteen (14) and thirteen (13) of said township eleven (11) north, range seven (7) west to the boundary line between said township eleven (11) north, range seven (7) west and township eleven (11) north, range six (6) west; thence south along the west boundary line of said township eleven (11) north, range six (6) west to the southwest corner of said township eleven (11) north, range six (6); thence east along the south boundary line of said township eleven (11) north, range six (6) west to the point of intersection with the summit of the main range of the Rocky mountains; thence southerly along the summit of the main range of the Rocky mountains to its intersection with the north boundary of township six (6) north, range eight (8) west; thence west to the northeast corner of section two (2) in said township six (6) north, range eight (8) west; thence running south by section lines to the place of beginning. The county seat is Deer Lodge, Montana.

History: County created Jan. 31, 1901, L. 1901, pp. 101-106; part of Lewis and Clark added to, Ch. 106, L. 1903; Secs. 2836, 2837, Rev. C. 1907; part added to

Missoula county, Ch. 46, L. 1915; boundaries defined by Ch. 205, L. 1921; re-en. Sec. 4341, R. C. M. 1921.

16-242. (4342) Prairie County. Beginning at the northeast corner of township sixteen (16) north, range fifty (50) east; thence at right angles due south along the range line between ranges fifty (50) and fifty-one (51) east, to the southwest corner of section seven (7), township fourteen (14) north, range fifty-one (51) east; thence running at right angles due east along section lines to the northeast corner of section thirteen (13), township fourteen (14) north, range fifty-one (51) east; thence running at right angles due south to the southeast corner of township fourteen (14) north, range fifty-one (51) east; thence running at right angles due east along the north line of township thirteen (13) north, to the northeast corner of township thirteen (13) north, range fifty-two (52) east; thence running at right angles due south one (1) mile to the southwest corner of section six (6), township thirteen (13) north, range fifty-three (53) east; thence running at right angles due east to the southeast corner of said section six (6), township thirteen (13) north, range fifty-three (53) east; thence running at right angles due south one (1) mile to the southwest corner of section eight (8), township thirteen (13) north, range fifty-three (53) east; thence running at right angles due east one (1) mile to the northeast corner of section seventeen (17), township thirteen (13) north, range fifty-three (53) east; thence running at right angles due south along section lines to the southwest corner of section twenty-one (21), township thirteen (13) north, range fifty-three (53) east; thence running at right angles due east along the north line of section twenty-eight (28), twenty-seven (27), twenty-six (26), twenty-five (25), township thirteen

(13) north, range fifty-three (53) east; thence along the north line of sections thirty (30), twenty-nine (29), twenty-eight (28), twenty-seven (27), twenty-six (26), twenty-five (25) of townships thirteen (13) north, fifty-four (54) east and thirteen (13) north, fifty-five (55) east to the northeast corner of section twenty-seven (27), township thirteen (13) north, range fifty-six (56) east; thence due south along the east line of sections twenty-seven (27) and thirty-four (34), to the southeast corner of section thirty-four (34), township thirteen (13) north, range fifty-six (56) east; thence west to the northwest corner of section six (6), township twelve (12) north, range fifty-seven (57) east; thence running at right angles due south along the east line of range fifty-six (56) to the southeast corner of township eleven (11) north, range fifty-six (56) east; thence at right angles due west along the south line of township eleven (11) north, to the northwest corner of township ten (10) north, range fifty-six (56) east; thence south to the northwest corner of section nineteen (19), township ten (10) north, range fifty-six (56) east; thence running at right angles due west along the north line of sections twenty-four (24), twenty-three (23), twenty-two (22), twenty-one (21), twenty (20) and nineteen (19), township ten (10) north, range fifty-five (55) east to the northwest corner of section nineteen (19), township ten (10) north, range fifty-five (55) east; thence running at right angles due south to the southwest corner of township ten (10) north, range fifty-five (55) east; thence running due west along the south line of township ten (10) north, range fifty-four (54) east, to the northwest corner of township nine (9) north, range fifty-four (54) east; thence due south two (2) miles to the southeast corner of section twelve (12), township nine (9) north, range fifty-three (53) east; thence due west along section lines to the southwest corner of section seven (7), township nine (9) north, range fifty-two (52) east; thence due north along the line between ranges fifty-one (51) and fifty-two (52) to the southeast corner of township ten (10) north, range fifty-one (51) east; thence due west along the north line of township nine (9) north, to the southwest corner of section thirty-three (33), township ten (10) north, range fifty (50) east; thence at right angles due north two (2) miles to the northeast corner of section twenty-nine (29), township ten (10) north, range fifty (50) east; thence at right angles due west to the northwest corner of section thirty (30), township ten (10) north, range fifty (50) east; thence along the line between ranges forty-nine (49) and fifty (50) to the northeast corner of township ten (10) north, range forty-nine (49) east; thence at right angles due west to the northwest corner of section four (4), township ten (10) north, range forty-nine (49) east; thence north to the northwest corner of section four (4), township eleven (11) north, range forty-nine (49) east; thence west to the southwest corner of township twelve (12) north, range forty-nine (49) east; thence north to the northwest corner of township twelve (12) north, range forty-nine (49) east; thence west to the southwest corner of township thirteen (13) north, range forty-seven (47) east; thence north along the west line of township thirteen (13) north to the northeast corner of section twenty-five (25), township thirteen (13) north, range forty-six (46) east; thence west along the section line to the southwest corner

of section nineteen (19), township thirteen (13) north, range forty-five (45) east; thence north along the west line of townships thirteen (13), fourteen (14), fifteen (15) and sixteen (16) north, to the northwest corner of township sixteen (16) north, range forty-five (45) east; thence due east along the north line of township sixteen (16) north to the northeast corner of township sixteen (16) north, range forty-five (45) east; thence due south to the northeast corner of township fifteen (15) north, range forty-five (45) east; thence due east to the northeast corner of township fifteen (15) north, range forty-six (46) east; thence due north to the northwest corner of township sixteen (16) north, range forty-seven (47) east; thence due east along the north line of township sixteen (16) north to the place of beginning. The county seat is Terry, Montana.

History: County created by petition and election, effective Feb. 5, 1915, from parts of Dawson, Custer and Fallon counties; boundaries extended March 9, 1917, Ch. 139, L. 1917; boundaries defined by Ch. 205, L. 1921; re-en. Sec. 4342, R. C. M. 1921.

16-243. (4343) Ravalli County. Beginning at the intersection of the boundary line between Montana and Idaho with the line dividing townships ten (10) and eleven (11) north, range twenty-two (22) west, and running thence in a general southerly direction following said boundary line to an intersection of the summit of the Bitter Root mountains with the continental divide, said intersection being six (6) miles, more or less, northwest of the crossing of the Dehalonega pass; thence running in a general northeasterly direction along the top of the continental divide to an intersection with the summit of the divide between Bitter Root river and Rock creek; thence following the summit of said divide in a northerly direction to its intersection with the north line of township ten (10) north, range eighteen (18) west; thence following the line between township ten (10) north and eleven (11) north, west to the point of beginning. The county seat is Hamilton, Montana.

History: County created, effective April 1, 1893, L. 1893, pp. 209-212; Sec. 1 of act amended by act approved March 2, 1893, L. 1893, p. 212; Sec. 4129, Pol. C. 1895; Sec. 2827, Rev. C. 1907; boundaries defined by Ch. 205, L. 1921; re-en. Sec. 4343, R. C. M. 1921.

16-244. (4344) Richland County. Beginning at the point of intersection of the range line between ranges fifty (50) and fifty-one (51) east at the center of the main channel of the Missouri river; running thence south along the range line between ranges fifty (50) and fifty-one (51) east to the north line of township twenty-four (24) north, range fifty-one (51) east; thence west along the north line of township twenty-four (24) north to the northeast corner of township twenty-four (24) north, range fifty (50) east; thence south along the range line between ranges fifty (50) and fifty-one (51) east to the southeast corner of township twenty-three (23) north, range fifty-one (51) east; thence east along the south line of township twenty-three (23) north, ranges fifty-one (51) and fifty-two (52) east to the northwest corner of township twenty-two (22) north, range fifty-three (53) east; thence south along the line between ranges fifty-two (52) and fifty-three (53) east to the southwest corner of township twenty-two (22) north, range fifty-three (53) east; thence east along the line between townships twenty-one (21) and twenty-two (22) north to the

northwest corner of township twenty-one (21) north, range fifty-six (56) east; thence south on the line between ranges fifty-five (55) and fifty-six (56) east to the southwest corner of said township twenty-one (21) north, range fifty-six (56) east; thence east along the line between townships twenty (20) and twenty-one (21) north to the northwest corner of township twenty (20) north, range fifty-seven (57) east; thence south to the southwest corner of township nineteen (19) north, range fifty-seven (57) east; thence east along the line between townships eighteen (18) and nineteen (19) north to the southwest corner of township nineteen (19) north, range sixty (60) east; thence north on the line between ranges fifty-nine (59) and sixty (60) east to the southwest corner of section eighteen (18), and township nineteen (19) north, range sixty (60) east; thence east on the section line to the Montana-North Dakota boundary; thence north along said Montana-North Dakota boundary to its intersection with the center of the main channel of the Missouri river; thence in a westerly direction following the center of the said channel to the place of beginning. The county seat is Sidney, Montana.

History: County created by petition and election, effective May 27, 1914, from portion of Dawson county; conflict in southern boundary by creation of Wibaux county, Aug. 17, 1914; southern boundary

fixed by Ch. 24, L. 1915, effective Feb. 19, 1915; portion detached by creation of McCone county, Ch. 33, L. 1919; boundaries defined by Ch. 205, L. 1921; re-en. Sec. 4344, R. C. M. 1921.

16-245. (4345) Roosevelt County. Beginning at a point at the northwest corner of township thirty-two (32) north, range forty-six (46) east; thence east along the township line between township thirty-two (32) and thirty-three (33) north, a distance of about forty-eight (48) miles to the northeast corner of township thirty-two (32) north, range fifty-three (53) east; thence south a distance of about six (6) miles along the range line between ranges fifty-three (53) and fifty-four (54) to the southeast corner of township thirty-two (32) north, range fifty-three (53) east; thence east along the township line a distance of about six (6) miles between townships thirty-one (31) and thirty-two (32), to the northeast corner of township thirty-one (31) north, range fifty-four (54) east; thence south a distance of about six (6) miles to the southeast corner of township thirty-one (31) north, range fifty-four (54) east; thence east along the township line between townships thirty (30) and thirty-one (31) north to the boundary line of the states of Montana and North Dakota; thence south to the Missouri river; thence west on a meandering line following the center of the present main channel of the Missouri river so as to include all that portion of sections one (1), two (2), six (6), seven (7), eleven (11), twelve (12) and thirteen (13) in township twenty-seven (27) north, range forty-nine (49) east, which lies north of the present main channel of the Missouri river, to an intersection with the line between ranges forty-five (45) and forty-six (46) east; thence in a northerly direction along said line, observing the offsets and corrections, to the place of beginning. The temporary county seat is Poplar, Montana.

History: County created by Ch. 23, L. 1919, effective Feb. 18, 1919, from portion of Sheridan county; boundaries defined by Ch. 205, L. 1921; re-en. Sec. 4345, R. C. M. 1921.

NOTE.—In accordance with the usual provisions for changing county seats, the county seat of Roosevelt county has been changed from Poplar to Wolf Point, Montana.

16-246. (4346) Rosebud County. Beginning at the northeast corner of section thirty-six (36), township thirteen (13) north, range forty-four (44) east; thence west, following the north line of sections thirty-six (36), thirty-five (35), thirty-four (34), thirty-three (33), thirty-two (32) and thirty-one (31) in township thirteen (13) north, range forty-four (44) east, and the north line of sections thirty-six (36), thirty-five (35), thirty-four (34), thirty-three (33), thirty-two (32) and thirty-one (31) in township thirteen (13) north, range forty-three (43) east, and the north line of sections thirty-six (36), thirty-five (35), thirty-four (34), thirty-three (33), thirty-two (32) and thirty-one (31) in township thirteen (13) north, range forty-two (42) east, and the north line of sections thirty-six (36), thirty-five (35), thirty-four (34), thirty-three (33), thirty-two (32) and thirty-one (31) in township thirteen (13) north, range forty-one (41) east and the north line of sections thirty-six (36), thirty-five (35), thirty-four (34), thirty-three (33), thirty-two (32) and thirty-one (31) in township thirteen (13) north, range forty (40) east; thence north for a distance of one (1) mile to the northeast corner of section twenty-five (25), township thirteen (13) north, range thirty-nine (39) east, the same being two (2) miles north of the third standard parallel; thence west on the north line of sections twenty-five (25), twenty-six (26), twenty-seven (27), twenty-eight (28), twenty-nine (29) and thirty (30) in township thirteen (13) north, range thirty-nine (39) east, and the north line of sections twenty-five (25), twenty-six (26), twenty-seven (27), twenty-eight (28), twenty-nine (29) and thirty (30) in township thirteen (13) north, range thirty-eight (38) east, and the north line of sections twenty-five (25), twenty-six (26), twenty-seven (27), twenty-eight (28), twenty-nine (29) and thirty (30) in township thirteen (13) north, range thirty-seven (37) east, and the north line of sections twenty-five (25), twenty-six (26), twenty-seven (27), twenty-eight (28), twenty-nine (29) and thirty (30) in township thirteen (13) north, range thirty-six (36) east, and the north line of sections twenty-five (25), twenty-six (26), twenty-seven (27), twenty-eight (28), twenty-nine (29) and thirty (30) in township thirteen (13) north, range thirty-five (35) east, and the north line of sections twenty-five (25), twenty-six (26), twenty-seven (27), twenty-eight (28), twenty-nine (29) and thirty (30) in township thirteen (13) north, range thirty-four (34) east, to the northwest corner of section thirty (30) in township thirteen (13) north, range thirty-four (34) east; thence south to the northeast corner of section thirty-six (36), township thirteen (13) north, range thirty-three (33) east, the same being one (1) mile north of the third standard parallel; thence west, following the north line of sections thirty-six (36), thirty-five (35), thirty-four (34), thirty-three (33), thirty-two (32) and thirty-one (31), in township thirteen (13) north, range thirty-three (33) east, and the north line of sections thirty-six (36), thirty-five (35), thirty-four (34), thirty-three (33), thirty-two (32) and thirty-one (31) in township thirteen (13) north, range thirty-two (32) east, and the north line of sections thirty-six (36), thirty-five (35), thirty-four (34), thirty-three (33), thirty-two (32) and thirty-one (31), in township thirteen (13) north, range thirty-one (31) east, and the north line of sections thirty-six (36), thirty-five (35) and thirty-four (34) in township

thirteen (13) north, range thirty (30) east, to a point in the center of the channel of the Musselshell river, where said section line intersects said river, the same being a point one (1) mile north of the third standard parallel; thence in a southerly direction following the center of said channel to the southeast corner of section twenty-nine (29), township ten (10) north, range thirty-one (31) east; running thence east along the south line of sections twenty-eight (28) and twenty-seven (27) to the southwest corner of section twenty-six (26) in township ten (10) north, range thirty-one (31) east; thence south along the east line of section thirty-four (34), township ten (10) north, range thirty-one (31) east and along the east line of sections three (3), ten (10), fifteen (15), twenty-two (22), twenty-seven (27) and thirty-four (34), township nine (9) north, range thirty-one (31) east to the southeast corner of said section thirty-four (34) in township nine (9) north, range thirty-one (31) east; thence east along the line between townships eight (8) and nine (9) north, to the northeast corner of section two (2), township eight (8) north, range thirty-six (36) east; thence south along the section line to the southeast corner of section two (2), township eight (8) north, range thirty-six (36) east; thence east to the intersection of the south boundary line of section one (1) with the range line between ranges thirty-six (36) and thirty-seven (37) east; thence south along the range line between ranges thirty-six (36) and thirty-seven (37) east, to the intersection of the north township line of township seven (7) north; thence east along the township line of township seven (7) north to the intersection with the range line between ranges thirty-seven (37) and thirty-eight (38) east; thence south along the line between ranges thirty-seven (37) and thirty-eight (38) east, to the center of the main channel of the Yellowstone river; thence in a southeasterly course along the main channel of the Yellowstone river to the east line of section six (6), township six (6) north, range thirty-eight (38) east; thence due south along the east line of sections six (6), seven (7), eighteen (18), nineteen (19), thirty (30) and thirty-one (31) of townships six (6) and five (5) north, range thirty-eight (38) east, to the southeast corner of section thirty-one (31), township five (5) north, range thirty-eight (38) east; thence along the north line of township four (4) north, range thirty-eight (38) east, to the northeast corner of township four (4) north, range thirty-eight (38) east; thence south to the northwest corner of section nineteen (19), township one (1) north, range thirty-nine (39) east; thence east to the northeast corner of section twenty-one (21), township one (1) north, range thirty-nine (39) east; thence south to the southeast corner of section thirty-three (33), township one (1) north, range thirty-nine (39) east; thence west to the northeast corner of section four (4), township one (1) south, range thirty-nine (39) east; thence south along the east line of sections four (4), nine (9), sixteen (16), twenty-one (21), twenty-eight (28) and thirty-three (33) of township one (1) south, range thirty-nine (39) east and the east line of section four (4) produced, township two (2) south, range thirty-nine (39) east, to an intersection with the northern boundary line of the northern Cheyenne Indian reservation; thence east following the northern boundary line of the said Indian reservation to its intersection with the east

line of township two (2) south, range forty (40) east; thence south along the line between ranges forty (40) and forty-one (41) east to the southwest corner of township five (5) south, range forty-one (41) east; thence west along the first standard parallel south to the northeast corner of township six (6) south, range forty (40) east; thence south on the line between ranges forty (40) and forty-one (41) east to the northwest corner of township eight (8) south, range forty-one (41) east; thence east to the northeast corner of township eight (8) south, range forty-four (44) east; thence north on the line between ranges forty-four (44) and forty-five (45) east, observing all corrections and offsets of the eleventh guide meridian to the northeast corner of township twelve (12) north, range forty-four (44) east; thence east along the third standard parallel north to the southeast corner of section thirty-six (36), township thirteen (13) north, range forty-four (44) east; thence north along the east line of said section thirty-six (36) to the northeast corner thereof, being the place of beginning. The county seat is Forsyth, Montana.

History: County created Feb. 1, 1901, L. 1901, pp. 97-101, effective March 1, 1901; Sec. 2839, Rev. C. 1907; Big Horn county created, including part of, Jan. 13, 1913; boundary line with Dawson county changed, Ch. 36, L. 1917; boundary line

with Musselshell changed, Ch. 108, L. 1917; boundary line with Yellowstone county changed, Ch. 159, L. 1917; Treasure county detached, Ch. 5, L. 1919; boundaries defined by Ch. 205, L. 1921; re-en. Sec. 4346, R. C. M. 1921.

16-247. (4347) Sanders County. Beginning at the intersection of the center of the channel of the Flathead river with the south line of the north tier of sections of township twenty-one (21) north; thence running southerly along the center of the main channel of the said Flathead or Pend d'Oreille river to its intersection with the south boundary line of township nineteen (19) north, range twenty-one (21) west, said point being approximately two (2) miles east of the southwest corner of said township; thence east on the line between townships eighteen (18) and nineteen (19) north, to the point where said line intersects the line between ranges twenty (20) and twenty-one (21) west; thence south on said line between ranges twenty (20) and twenty-one (21) west, to the summit of the range of mountains commonly called the Coeur d'Alene, said mountains dividing the waters of the Missoula and Pend d'Oreille or Flathead rivers; thence westerly along said summit of the Coeur d'Alene mountains to a point where said summit intersects the summit of the watershed dividing the waters of the Missoula and Clark's Fork rivers; thence westerly along said summit dividing the waters of the Missoula and Clark's Fork rivers to the point where said summit intersects the Horse Plains guide meridian; thence due north along said Horse Plains guide meridian to the northeast corner of section twenty-five (25) in township eighteen (18) north, range twenty-six (26) west; thence due west three (3) miles to the southwest corner of section twenty-two (22), in said township and range; thence due north one (1) mile to the northeast corner of section twenty-one (21) in said township and range; thence due west to the line between ranges twenty-six (26) and twenty-seven (27) west; thence north on the line between ranges twenty-six (26) and twenty-seven (27) west, to the summit of the Coeur d'Alene mountains; thence westerly along the summit of said Coeur d'Alene mountains to the boundary line between

the state of Montana and the state of Idaho, and northerly along said boundary line to an intersection with the divide between the Clark's Fork of the Columbia and the Kootenai rivers; thence running in an easterly and southeasterly direction following the summit of said divide to an intersection with the south line, or the south line extended, of section twelve (12), township twenty-six (26) north, range twenty-eight (28) west; thence running east seven (7) miles, more or less, along the south line of said section twelve (12) and the south line of sections seven (7), eight (8), nine (9), ten (10), eleven (11) and twelve (12), township twenty-six (26) north, range twenty-seven (27) west, to the southeast corner of section twelve (12), township twenty-six (26) north, range twenty-seven (27) west; thence south to the southwest corner of section eighteen (18), township twenty-six (26) north, range twenty-six (26) west; thence east one (1) mile to the southeast corner of said section eighteen (18); thence south along the section line to the southeast corner of section thirty-one (31), township twenty-five (25) north, range twenty-six (26) west; thence east along the sixth standard parallel north to the northeast corner of township twenty-four (24) north, range twenty-four (24) west; thence south on the line between ranges twenty-three (23) and twenty-four (24) west to the southwest corner of section eighteen (18), township twenty-three (23) north, range twenty-three (23) west; thence east one (1) mile to the southeast corner of said section eighteen (18); thence south a distance of ten (10) miles more or less following the section line to the southeast corner of section six (6), township twenty-one (21) north, range twenty-three (23) west; thence east following the south line of the north tier of sections of township twenty-one (21) north, to the place of beginning. The county seat is Thompson Falls, Montana.

History: County created from portion of Missoula, March 1, 1906, Ch. 9, L. 1905; Sec. 2841, Rev. C. 1907; boundaries changed Feb. 25, 1911, Ch. 54, L. 1911; boundaries changed Feb. 28, 1913, Ch. 42,

L. 1913, defining Flathead; boundaries changed March 1, 1913, Ch. 46, L. 1913, defining Lincoln; boundaries defined by Ch. 205, L. 1921; re-en. Sec. 4347, R. C. M. 1921.

16-248. (4348) Sheridan County. Commencing at a point on the northern boundary line of the state of Montana which is intersected by the range line between ranges fifty (50) and fifty-one (51) east, and running thence south along said range line a distance of six (6) miles more or less to the southeast corner of township thirty-seven (37) north, range fifty (50) east; thence east on the township line between townships thirty-seven (37) and thirty-six (36) north, range fifty-one (51) east a distance of one (1) mile to the line between sections three (3) and four (4), township thirty-six (36) north, range fifty-one (51) east; thence directly south on the section line a distance of about eighteen (18) miles to the southeast corner of section thirty-three (33), township thirty-four (34) north, range fifty-one (51) east; thence east on the township line between townships thirty-three (33) and thirty-four (34) north, range fifty-one (51) east for a distance of three (3) miles to the southeast corner of township thirty-four (34) north, range fifty-one (51) east; thence south on the line between ranges fifty-one (51) and fifty-two (52) east, a distance of six (6) miles to the southeast corner of township thirty-three (33) north, range fifty-one (51) east; thence east along the eighth standard parallel

north between townships thirty-two (32) and thirty-three (33) north to the northeast corner of township thirty-two (32) north, range fifty-three (53) east; thence south a distance of about six (6) miles along the line between ranges fifty-three (53) and fifty-four (54) east to the southeast corner of township thirty-two (32) north, range fifty-three (53) east; thence east along the township line a distance of about six (6) miles between townships thirty-one (31) and thirty-two (32) north, to the northeast corner of township thirty-one (31) north, range fifty-four (54) east; thence south a distance of about six (6) miles to the southeast corner of township thirty-one (31) north, range fifty-four (54) east; thence east along the line between townships thirty (30) and thirty-one (31) north, to its intersection with the boundary line between the state of Montana and the state of North Dakota; thence in a northerly direction along the eastern boundary line of the state of Montana, to the point where said boundary line is intersected by the boundary line between the state of Montana and the Dominion of Canada; thence in a westerly direction long the northern boundary line of the state of Montana to the point of beginning. The county seat is Plentywood, Montana.

History: County created by petition and election, effective March 24, 1913, from portion of Valley county; Roosevelt county detached by Ch. 23, L. 1919, effective Feb. 18, 1919; Daniels county detached, Aug. 30, 1920; boundaries defined by Ch. 205, L. 1921; re-en. Sec. 4348, R. C. M. 1921.

16-249. (4349) Silver Bow County. Beginning at a point where the line of the divide between the headwaters of Brown's gulch and Dry Cottonwood creek intersects the continental divide and running thence southwesterly along the line of the said divide between the headwaters of Brown's gulch and Dry Cottonwood creek to the point where said divide intersects the first standard parallel north of the Montana base line; thence running west along said standard parallel to the Deer Lodge guide meridian; thence south to the southeast corner of township four (4) north, range ten (10) west; thence west to the southwest corner of section thirty-three (33), township four (4) north, range ten (10) west; thence in a southerly and westerly direction to the top of the divide between Willow creek and Beef strait; thence along the top of said divide to the point where it intersects the main range of the Rocky mountains; thence following the summit of said main range of the Rocky mountains as it trends in a southerly direction to the point where it is intersected by the divide between Bear creek and Johnson creek; thence following said divide in a southerly direction and continuing south to a point in the center of the channel of the Big Hole river; thence down the center of said river to the mouth of Camp creek; thence up Camp creek to its right-hand fork; thence up said fork to its source; thence in a direct line to the summit of Table mountain; thence in a direct line to Parson's bridge on the Jefferson river; thence westerly along Parson's toll road, leading from Parson's bridge to the city of Butte, to the point where said road crosses Fish creek; thence up Fish creek to the head of Belcher's ditch; thence in a direct line to the forks of Little Pipestone creek, near the site of Parson's old toll gate; thence up the north fork of Little Pipestone creek to its source; thence in a direct line to the nearest point of

the continental divide; thence northerly along said continental divide to the place of beginning. The county seat is Butte, Montana.

History: County created Feb. 16, 1881, L. 1881, p. 85; boundaries changed March 7, 1883, L. 1883, p. 97; Sec. 741, 5th Div. Comp. Stat. 1887; Granite county created out of part of, March 2, 1893, L. 1893, p. 212; Sec. 4118, Pol. C. 1895; part added to

Deer Lodge county, Ch. 62, L. 1903; Secs. 2806, 2790, Rev. C. 1907; part of Deer Lodge county added to and boundaries defined, Ch. 21, L. 1917, effective May 1, 1917; boundaries defined by Ch. 205, L. 1921; re-en. Sec. 4349, R. C. M. 1921.

16-250. (4350) Stillwater County. Beginning on the east line of section thirty-five (35), township two (2) south, range twenty-three (23) east, where same is intersected by the mid-channel of the Yellowstone river; thence north along the east line of section thirty-five (35) and twenty-six (26), to the northeast corner of section twenty-six (26), township two (2) south, range twenty-three (23) east; thence west along the north line of said section twenty-six (26) to the northwest corner thereof; thence north along the east line of section twenty-two (22), township two (2) south, range twenty-three (23) east, to the northeast corner of section twenty-two (22), said township and range; thence west along the north line of said section twenty-two (22) to the northwest corner thereof; thence north along the east line of sections sixteen (16) and nine (9), township two (2) south, range twenty-three (23) east, to the northeast corner of section nine (9), said township and range; thence west along the north line of section nine (9), township two (2) south, range twenty-three (23) east, to the northwest corner of said section nine (9); thence north along the east line of section five (5), said township and range, to the southeast corner of section thirty-two (32), township one (1) south, range twenty-three (23) east; thence north along the east line of sections thirty-two (32), twenty-nine (29), twenty (20), seventeen (17), eight (8) and five (5), township one (1) south, range twenty-three (23) east, to the base line; thence east along the base line to the southeast corner of section thirty-one (31), township one (1) north, range twenty-three (23) east; thence north along the east line of sections thirty-one (31), thirty (30), nineteen (19), eighteen (18), seven (7) and six (6), of townships one (1) and two (2) north, range twenty-three (23) east, to the northeast corner of section six (6), township two (2) north, range twenty-three (23) east; thence west along the north line of section six (6), township two (2) north, range twenty-three (23) east, to the southeast corner of township three (3) north, range twenty-two (22) east; thence north along the east line of townships three (3) and four (4) north, range twenty-two (22) east, to the first standard parallel north; thence west along the first standard parallel north to the northwest corner of section six (6), township four (4) north, range nineteen (19) east; thence south along the west line of townships four (4) and three (3) north, range nineteen (19) east, to the northeast corner of township two (2) north, range eighteen (18) east; thence west along the line between townships two (2) and three (3) north to the northeast corner of section five (5), township two (2) north, range eighteen (18) east; thence south along the east line of sections five (5), eight (8), seventeen (17), twenty (20), twenty-nine (29) and thirty-two (32) to the southeast corner of section thirty-two (32), township two (2) north, range eighteen (18) east; thence west along the

north line of sections five (5) and six (6), township one (1) north, range eighteen (18) east, to the northwest corner of said section six (6); thence south along the line between ranges seventeen (17) and eighteen (18) east to the base line; thence west along said base line to the northwest corner of section six (6), township one (1) south, range eighteen (18) east; thence south along the west line of townships one (1) and two (2) south, range eighteen (18) east to the southwest corner of section thirty-one (31), township two (2) south, range eighteen (18) east; thence west along the north line of township three (3) south, range seventeen (17) east, to the northwest corner of section six (6), township three (3) south, range seventeen (17) east; thence south along the west line of township three (3) south, range seventeen (17) east, to the northeast corner of section twenty-four (24), township three (3) south, range sixteen (16) east; thence west along the north line of sections twenty-four (24), twenty-three (23), twenty-two (22), twenty-one (21), twenty (20) and nineteen (19), township three (3) south, range sixteen (16) east, to the northwest corner of section nineteen (19), in township three (3) south, range sixteen (16) east; thence south along the west line of township three (3) south, range sixteen (16) east, to the northeast corner of section one (1), township four (4) south, range fifteen (15) east; thence west along the north line of township four (4) south, range fifteen (15) east, to the northwest corner of section six (6), township four (4) south, range fifteen (15) east; thence south along the west line of townships four (4) and five (5) south, range fifteen (15) east, to the first standard parallel south; thence west along the first standard parallel south to a point which, when surveyed, will be the northwest corner of township six (6) south, range fourteen (14) east; thence south along the west line of townships six (6) and seven (7) south, range fourteen (14) east, to a point which, when surveyed, will be the southwest corner of section thirty-one (31), township seven (7) south, range fourteen (14) east; thence east along the south line of township seven (7) south, ranges fourteen (14), fifteen (15) and sixteen (16) east, to a point which, when surveyed, will be the southeast corner of township seven (7) south, range sixteen (16) east; thence north along the east line of said township to the northeast corner thereof; thence east along the south line of township six (6) south, range seventeen (17) east, to the southeast corner of section thirty-four (34), township six (6) south, range seventeen (17) east; thence north along the east line of sections thirty-four (34), twenty-seven (27), and twenty-two (22), to the northeast corner of section twenty-two (22), township six (6) south, range seventeen (17) east; thence east along the line between sections fourteen (14) and twenty-three (23), township six (6) south, range seventeen (17) east, to the southeast corner of section fourteen (14), township six (6) south, range seventeen (17) east; thence north along the east line of sections fourteen (14) and eleven (11), township six (6) south, range seventeen (17) east, to the northeast corner of section eleven (11), township six (6) south, range seventeen (17) east; thence east along the south line of section one (1), township six (6) south, range seventeen (17) east, to the southeast corner of said section one (1); thence north along the east line of township six (6) south, range seventeen (17) east,

to the northeast corner of section one (1); thence east along the first standard parallel south to the southeast corner of section thirty-six (36), township five (5) south, range seventeen (17) east; thence north along the east line of township five (5) south, range seventeen (17) east, to the northeast corner of said section thirty-six (36), township five (5) south, range seventeen (17) east; thence east along the line between sections thirty (30) and thirty-one (31), township five (5) south, range eighteen (18) east, to the southeast corner of section thirty (30), township five (5) south, range eighteen (18) east; thence north along the east line of said section thirty (30), to the northeast corner thereof; thence east along the line between sections twenty (20) and twenty-nine (29), township five (5) south, range eighteen (18) east, to the southeast corner of said section twenty (20); thence north along the east line of said section twenty (20), to the northeast corner thereof; thence east along the line between sections sixteen (16) and twenty-one (21), township five (5) south, range eighteen (18) east, to the southeast corner of said section sixteen (16); thence north along the east line of said section sixteen (16), township five (5) south, range eighteen (18) east, to the northeast corner thereof; thence east along the line between sections ten (10) and fifteen (15), township five (5) south, range eighteen (18) east, to the southeast corner of said section ten (10); thence north along the east line of said section ten (10), to the northeast corner thereof; thence east along the south line of sections two (2) and one (1), township five (5) south, range eighteen (18) east, to the southeast corner of said section one (1); thence north along the east line of said section one (1), to the southwest corner of section thirty-one (31), township four (4) south, range nineteen (19) east; thence east along the south line of said section thirty-one (31), township four (4) south, range nineteen (19) east, to the southeast corner of said section; thence north along the east line of said section thirty-one (31), to the northeast corner thereof; thence east along the south line of sections twenty-nine (29), twenty-eight (28), and twenty-seven (27), township four (4) south, range nineteen (19) east, to the southeast corner of said section twenty-seven (27); thence north along the east line of said section twenty-seven (27), township four (4) south, range nineteen (19) east, to the northeast corner thereof; thence east along the south line of sections twenty-three (23) and twenty-four (24), township four (4) south, range nineteen (19) east, to the southeast corner of said section twenty-four (24); thence east along the south line of sections nineteen (19), twenty (20), twenty-one (21), twenty-two (22), twenty-three (23), and twenty-four (24), township four (4) south, range twenty (20) east, to the southeast corner of said section twenty-four (24); thence north along the east line of said township to the northeast corner thereof; thence east along the south line of township three (3) south, range twenty-one (21) east, to the southeast corner of section thirty-three (33), township three (3) south, range twenty-one (21) east; thence north along the east line of sections thirty-three (33), twenty-eight (28), twenty-one (21), sixteen (16), and nine (9), in said township and range, to an intersection with the center of the channel of the Yellowstone river; thence down the center of the channel of the Yellowstone river to an intersection with the

east line of section thirty-five (35), township two (2) south, range twenty-three (23) east, the place of beginning. The county seat is Columbus, Montana.

History: County created March 24, 1913, by petition and election, out of portions of Yellowstone, Carbon and Sweet Grass; part of Sweet Grass added to and

part added to Sweet Grass, March 5, 1915, L. 1915, Ch. 74; boundaries defined by Ch. 205, L. 1921; re-en. Sec. 4350, R. C. M. 1921.

16-251. (4351) Sweet Grass County. Beginning at the southwest corner of section thirty-five (35), township seven (7) south, range twelve (12) east; and running thence north along the west boundaries of sections thirty-five (35), twenty-six (26), twenty-three (23), fourteen (14), eleven (11), and two (2), of said township seven (7) south, range twelve (12) east, continuing north along the west boundaries of sections thirty-five (35), twenty-six (26), twenty-three (23), fourteen (14), eleven (11), and two (2), of township six (6) south, range twelve (12) east, to the first standard parallel south; thence east along said first parallel south to the southwest corner of section thirty-five (35), township five (5) south, range twelve (12) east; thence north along the west boundary of sections thirty-five (35), twenty-six (26), twenty-three (23), fourteen (14), eleven (11), and two (2), in each of townships five (5), four (4), three (3), two (2), and one (1), respectively, range twelve (12) east, to the northwest corner of section two (2), township one (1) south, range twelve (12) east; thence west along the base line to the line between ranges eleven (11) and twelve (12) east; thence north along the line between ranges eleven (11) and twelve (12) east, observing the offsets and corrections to the northwest corner of township five (5) north, range twelve (12) east; thence east along said township line to the northeast corner of township five (5) north, range sixteen (16) east; thence south along the range line to the southwest corner of township five (5) north, range seventeen (17) east; thence east along the first standard parallel north to the northeast corner of section four (4), township four (4) north, range seventeen (17) east; thence south along the section line to the southeast corner of section thirty-three (33), township four (4) north, range seventeen (17) east; thence east along the township line to the southeast corner of township four (4) north, range eighteen (18) east; thence south along the range line to the southeast corner of township three (3) north, range eighteen (18) east; thence west along the line between townships two (2) and three (3) north, to the northeast corner of section five (5), township two (2) north, range eighteen (18) east; thence south along the east line of sections five (5), eight (8), seventeen (17), twenty (20), twenty-nine (29), and thirty-two (32), to the southeast corner of section thirty-two (32), township two (2) north, range eighteen (18) east; thence west along the north line of sections five (5) and six (6), township one (1) north, range eighteen (18) east, to the northwest corner of said section six (6); thence south along the line between ranges seventeen (17) and eighteen (18) east, to the base line; thence west along said base line to the northwest corner of section six (6), township one (1) south, range eighteen (18) east; thence south along the west line of townships one (1) and two (2) south, range eighteen (18) east, to the southwest corner of section thirty-one (31), township two (2) south, range eighteen (18)

east; thence west along the north line of township three (3) south, range seventeen (17) east, to the northwest corner of section six (6), township three (3) south, range seventeen (17) east; thence south along the west line of township three (3) south, range seventeen (17) east, to the northeast corner of section twenty-four (24), township three (3) south, range sixteen (16) east; thence west along the north line of sections twenty-four (24), twenty-three (23), twenty-two (22), twenty-one (21), twenty (20), and nineteen (19), township three (3) south, range sixteen (16) east, to the northwest corner of section nineteen (19), in township three (3) south, range sixteen (16) east; thence south along the west line of township three (3) south, range sixteen (16) east, to the northeast corner of section one (1), township four (4) south, range fifteen (15) east; thence west along the north line of township four (4) south, range fifteen (15) east, to the northwest corner of section six (6), township four (4) south, range fifteen (15) east; thence south along the west line of townships four (4) and five (5) south, range fifteen (15) east; to the first standard parallel south; thence west along the first standard parallel south to a point which, when surveyed, will be the northwest corner of township six (6) south, range fourteen (14) east; thence south along the west line of township six (6) and seven (7) south, range fourteen (14) east, to a point which, when surveyed, will be the southwest corner of section thirty-one (31), township seven (7) south, range fourteen (14) east; thence west along the line dividing townships seven (7) and eight (8) south to the place of beginning. The county seat is Big Timber, Montana.

History: County created March 5, 1895, L. 1895, pp. 54-58; Sec. 4134, Pol. C. 1895; Sec. 2832, Rev. C. 1907; Stillwater county created from part of, Ch. 112, L. 1911; part of Stillwater added to and part added to Stillwater county, Ch. 74, L. 1915;

Wheatland county created, including part of, Ch. 55, L. 1917; portion detached by creation of Golden Valley county, Oct. 4, 1920; boundaries defined by Ch. 205, L. 1921; re-en. Sec. 4351, R. C. M. 1921.

16-252. (4352) Teton County. Commencing at the intersection of the head waters of the north fork of the Sun river with the summit of the main range of the Rocky mountains; and thence southeasterly meandering and following the center of the channel of the north fork of the Sun river to Sun river; thence meandering down the center of the channel of Sun river to the line dividing ranges two (2) and three (3) west; thence north to the southwest corner of township twenty-two (22) north, range two (2) west; thence east to the Montana principal meridian; thence due north along said Montana principal meridian a distance of twenty-six (26) miles, more or less, to the northeast corner of section twenty-five (25), township twenty-six (26) north, range one (1) west; thence due west along the section line to the southwest corner of section twenty-two (22), township twenty-six (26) north, range three (3) west; thence due north along the section line to the southwest corner of section thirty-four (34), township twenty-seven (27) north, range three (3) west; thence due west along the township line three (3) miles to the southwest corner of section thirty-one (31), township twenty-seven (27) north, range three (3) west; thence due north along the township line three (3) miles to the southwest corner of section eighteen (18), township twenty-seven (27) north, range three (3) west; thence due west along the section line to

the southwest corner of section eighteen (18), township twenty-seven (27) north, range four (4) west, a distance of six (6) miles; thence due north along the line between ranges four (4) and five (5) west, a distance of three (3) miles to the southwest corner of section thirty-one (31), township twenty-eight (28) north, range four (4) west; thence due west along the line between township twenty-seven (27) north and twenty-eight (28) north, to the point where such line, if extended, would intersect the summit of the main range of the Rocky mountains; thence in a southerly direction following the summit of the main range of the Rocky mountains to the place of beginning. The county seat is Choteau, Montana.

History: County created March 1, 1893, L. 1893, p. 205; Sec. 4127, Pol. C. 1895; Sec. 2825, Rev. C. 1907; Toole county created, May 7, 1914, from portion of Teton; Glacier county created April 1, 1919, Ch. 21, L. 1919, from portion of Teton; Pondera county created April 1, 1919, Ch. 22,

L. 1919, from portion of Teton; boundaries defined by Ch. 205, L. 1921; boundary line with Chouteau changed and portion added to Teton by Ch. 174, L. 1921, effective March 5, 1921; re-en. Sec. 4352, R. C. M. 1921.

See Sec. 16-253.

16-253. (4362) Change in boundary of Teton and Chouteau. The boundary line between the counties of Teton and Chouteau be and the same hereby is changed so that hereafter the said boundary between the said counties shall be as follows: Commencing at a point on the boundary line between the counties of Chouteau and Cascade where the line between ranges two and three east of the Montana meridian intersects said boundary line; thence running due north to a point where the said line between ranges two and three east of the Montana meridian intersects the boundary line between the counties of Chouteau and Pondera, and taking from the said county of Chouteau and adding to and making a part of the said county of Teton, all of the following described territory, to-wit: township twenty-three (23), twenty-four (24), and twenty-five (25), and sections twenty-five (25), twenty-six (26), twenty-seven (27), twenty-eight (28), twenty-nine (29), thirty (30), thirty-one (31), thirty-two (32), thirty-three (33), thirty-four (34), thirty-five (35), and thirty-six (36) in township twenty-six (26), north of range one (1), east of the Montana meridian, and townships twenty-three (23), twenty-four (24), and twenty-five (25), and sections twenty-five (25) twenty-six (26), twenty-seven (27), twenty-eight (28), twenty-nine (29), thirty (30), thirty-one (31), thirty-two (32), thirty-three (33), thirty-four (34), thirty-five (35), and thirty-six (36) of township twenty-six (26) north of range two (2), east of the Montana meridian.

History: En. Sec. 1, Ch. 174, L. 1921; re-en. Sec. 4362, R. C. M. 1921.

16-254. (4353) Toole County. Beginning at a point on the international boundary line where it intersects with the line between ranges three (3) and four (4) east; thence west about forty-two (42) miles along said international boundary line to the northwest corner of section six (6), township thirty-seven (37) north, range four (4) west; thence south about thirty-six (36) and one-half ($\frac{1}{2}$) miles along the range line between ranges four (4) and five (5) west, to the center of Marias river; thence following the center of said stream in a southeasterly direction to its intersection with the section line between sections fifteen (15) and sixteen

(16), township thirty-one (31) north, range three (3) west; thence south about three (3) miles to the southwest corner of section thirty-four (34), township thirty-one (31) north, range three (3) west; thence east about nine (9) miles, to the northwest corner of section six (6), township thirty (30) north, range one (1) west; thence south about three (3) miles to the southwest corner of section eighteen (18), township thirty (30) north, range one (1) west; thence east about six (6) miles to the southeast corner of section thirteen (13), township thirty (30) north, range one (1) west; thence south about nine (9) miles to the southwest corner of section thirty-one (31), township twenty-nine (29) north, range one (1) east; thence east about eighteen (18) miles to the southeast corner of section thirty-six (36), township twenty-nine (29) north, range three (3) east; thence north about forty-eight (48) miles to the northeast corner of section one (1), township thirty-six (36) north, range three (3) east; thence east to the southeast corner of section thirty-six (36), township thirty-seven (37) north, range three (3) east; thence north along the line between ranges three (3) and four (4) east, to the place of beginning. The county seat is Shelby, Montana.

History: County created by petition and election, out of Teton and Hill counties, effective May 7, 1914; boundaries de-

finied by Ch. 205, L. 1921; re-en. Sec. 4353, R. C. M. 1921.

16-255. (4354) Treasure County. Beginning at the northwest corner of section four (4), township eight (8) north, range thirty-two (32) east; thence east along the north line of township eight (8) north, to the northeast corner of section two (2), township eight (8) north, range thirty-six (36) east; thence south along the section line to the southeast corner of section two (2), township eight (8) north, range thirty-six (36) east; thence east to the intersection of the south boundary line of section one (1) with the range line between ranges thirty-six (36) and thirty-seven (37) east; thence south along the range line between ranges thirty-six (36) and thirty-seven (37) east, to the intersection of the north township line of township seven (7) north; thence east along the township line of township seven (7) north, to the intersection with the range line between ranges thirty-seven (37) and thirty-eight (38) east; thence south along the line between ranges thirty-seven (37) and thirty-eight (38) east, to the center of the main channel of the Yellowstone river; thence in a southeasterly course along the main channel of the Yellowstone river, to the east line of section six (6), township six (6) north, range thirty-eight (38) east; thence due south along the east line of sections six (6), seven (7), eighteen (18), nineteen (19), thirty (30), and thirty-one (31), of townships six (6) and five (5) north, range thirty-eight (38) east, to the southeast corner of section thirty-one (31), township five (5) north, range thirty-eight (38) east; thence east along the north line of township four (4) north, range thirty-eight (38) east, to the northeast corner thereof; thence south to the southeast corner of section thirty-six (36), township two (2) north, range thirty-eight (38) east; thence west to the southwest corner of township two (2) north, range thirty-eight (38) east; thence north to the southwest corner of section eighteen (18), township two (2) north, range thirty-eight (38) east;

thence west along the south line of sections thirteen (13), fourteen (14), fifteen (15), sixteen (16), seventeen (17), and eighteen (18), to the southwest corner of section eighteen (18), township two (2) north, range thirty-seven (37) east; thence north along the range line to the southwest corner of section thirty-one (31), township three (3) north, range thirty-seven (37) east; thence west along the south line of township three (3) north, range thirty-six (36) east, and township three (3) north, range thirty-five (35) east, to the southwest corner of said township three (3) north, range thirty-five (35) east; thence north along the range line to the southwest corner of section thirty-one (31), township four (4) north, range thirty-five (35) east; thence west along the north line of the township three (3) north, range thirty-four (34) east, to the center of the Big Horn river; thence in a northeasterly direction along the center of the Big Horn river to the point of confluence of the Yellowstone and Big Horn rivers in township five (5) north, range thirty-four (34) east; running thence along the west line of section twenty-two (22), township five (5) north, range thirty-four (34) east, to the northwest corner of said section twenty-two (22); thence west one (1) mile to the northwest corner of section twenty-one (21); thence north one (1) mile to the northeast corner of section seventeen (17); thence west one (1) mile to the northwest corner of section seventeen (17); thence north two (2) miles to the northeast corner of section six (6), township five (5) north, range thirty-four (34) east; thence west one (1) mile to the southeast corner of section thirty-six (36), township six (6) north, range thirty-three (33) east; thence north along the range line two (2) miles to the northeast corner of section twenty-five (25); thence west one (1) mile to the northwest corner of section twenty-five (25); thence north one (1) mile to the northeast corner of section twenty-three (23); thence west one (1) mile to the northwest corner of section twenty-three (23); thence north two (2) miles to the northeast corner of section ten (10); thence west one (1) mile to the northwest corner of section ten (10); thence north one (1) mile to the northeast corner of section four (4), township six (6) north, range thirty-three (33) east; thence west one (1) mile to the southwest corner of section thirty-three (33), township seven (7) north, range thirty-three (33) east; thence north three (3) miles to the northeast corner of section twenty (20); thence west one (1) mile to the northwest corner of section twenty (20); thence north one (1) mile to the northeast corner of section eighteen (18); thence west one (1) mile to the southwest corner of section seven (7); thence north along the range line two (2) miles to the northwest corner of section six (6), township seven (7) north, range thirty-three (33) east; thence west one (1) mile to the southwest corner of section thirty-six (36), township eight (8) north, range thirty-two (32) east; thence north one (1) mile to the northwest corner of section thirty-six (36); thence west one (1) mile to the southwest corner of section twenty-six (26); thence north two (2) miles to the northeast corner of section twenty-two (22); thence west one (1) mile to the northwest corner of section twenty-two (22); thence north two (2) miles to the northeast corner of section nine (9); thence west one (1) mile to the northwest corner of section nine (9); thence north along the west side of

section four (4), to the northwest corner of section four (4), township eight (8) north, range thirty-two (32) east, to the place of beginning. The county seat is Hysham, Montana.

History: County created by Ch. 5, L. Ch. 205, L. 1921; re-en. Sec. 4354, R. C. M. 1919, effective April 1, 1919, from portion of Rosebud county; boundaries defined by 1921.

16-256. (4355) Valley County. Commencing at a point where the range line between ranges thirty-four (34) and thirty-five (35) east, of the Montana meridian joins the international boundary line between the United States and Canada; thence running south about thirty (30) miles along said range line, observing the offsets and corrections to a point where said range line intersects the township line between townships thirty-two (32) and thirty-three (33) north; thence east along said township line about three-fourths ($\frac{3}{4}$) of a mile to a point on said township line where said line intersects the section line between sections four (4) and five (5), in township thirty-two (32) north, of range thirty-five (35) east; thence south about four and one-half ($4\frac{1}{2}$) miles on the section line to a point where said section line intersects the center of the channel of Milk river; thence westerly about three (3) miles along the center of the channel of Milk river to a point where the same intersects the section line between sections twenty-three (23) and twenty-four (24), in township thirty-two (32) north, range thirty-four (34) east; thence south about two (2) miles along the section line to a point where said section line intersects the township line between townships thirty-one (31) and thirty-two (32) north; thence west about two (2) miles along said township line to the section corner common to sections three (3) and four (4), in township thirty-one (31) north, range thirty-four (34) east; thence south about six (6) miles along the section line to a point where said section line intersects the township line between townships thirty (30) and thirty-one (31) north; thence east about two (2) miles on said township line to the northwest corner of section one (1), township thirty (30) north, range thirty-four (34) east; thence south about six (6) miles along the section line to a point where said section line intersects the township line between townships twenty-nine (29) and thirty (30) north; thence west about five (5) miles along said township line to a point where said township line intersects the range line between ranges thirty-three (33) and thirty-four (34) east; thence south about forty-three (43) miles along said range line, observing the offsets and corrections, to a point where said range line intersects the center of the channel of the Missouri river; thence in an easterly direction following the center of the channel of the Missouri river to its intersection with the line dividing ranges forty-five (45) and forty-six (46) east; thence running north on the line dividing ranges forty-five (45) and forty-six (46) east, observing offsets and corrections to the eighth standard parallel north; thence west along said eighth standard parallel north between townships thirty-two (32) and thirty-three (33) north, to the southwest corner of township thirty-three (33) north, range forty-four (44) east; thence north along the range line between ranges forty-three (43) and forty-four (44) east, a distance of about eighteen (18) miles, to the township line between townships thirty-five (35) and thirty-six (36) north; thence west along said township line,

a distance of about six (6) miles, to the range line between ranges forty-two (42) and forty-three (43) east; thence northerly along said range line, observing the offsets and corrections thereof, a distance of about twelve (12) miles, to the northern boundary line of the state of Montana; thence west along said boundary line, a distance of about forty-eight (48) miles, to the place of beginning. The county seat is Glasgow, Montana.

History: County created by act of Feb. 6, 1893, L. 1893, p. 202, effective March 1, 1893; Sec. 4125, Pol. C. 1895; Sec. 2823, Rev. C. 1907; Sheridan county detached March 24, 1913; Phillips county created from portion of Valley, Feb. 5, 1915; Daniels county created from portion of

Valley, Aug. 30, 1920; boundaries defined by Ch. 205, L. 1921; re-en. Sec. 4355, R. C. M. 1921.

References

Valley County v. Thomas, 109 M 345, 348, 97 P 2d 345.

16-257. (4356) Wheatland County. Beginning at the point where the boundary line between ranges eleven (11) and twelve (12) east, intersects the summit of the Little Belt mountains; thence south along the said boundary line between the said ranges eleven (11) and twelve (12), to the southwest corner of township nine (9) north, range twelve (12) east; thence west along the second standard parallel north, to the northwest corner of township eight (8) north, range twelve (12) east; thence south along the boundary line between said ranges eleven (11) and twelve (12), to the southwest corner of township six (6) north, range twelve (12) east; thence east along the line between townships five (5) and six (6) north, to the southeast corner of township six (6) north, range eighteen (18) east; thence north along the line between ranges eighteen (18) and nineteen (19) east, to the northeast corner of township eight (8) north, range eighteen (18) east; thence east along the second standard parallel north to the southeast corner of township nine (9) north, range eighteen (18) east; thence north along the line between ranges eighteen (18) and nineteen (19) east, to the northeast corner of section twenty-five (25), township eleven (11) north, range eighteen (18) east; thence west along the north line of sections twenty-five (25), twenty-six (26), twenty-seven (27), twenty-eight (28), twenty-nine (29), and thirty (30), in townships eleven (11) north, range eighteen (18) east, eleven (11) north, range seventeen (17) east, and eleven (11) north, range sixteen (16) east, to a point where said section line, extended, intersects the summit of the divide between the Musselshell and Missouri rivers; thence following the summit of said divide in a westerly direction to the place of beginning. The county seat is Harlowton, Montana.

History: County created April 1, 1917, Ch. 55, L. 1917, from portions of Meagher and Sweet Grass; boundaries defined by

Ch. 205, L. 1921; re-en. Sec. 4356, R. C. M. 1921.

16-258. (4357) Wibaux County. Beginning at the point of intersection of the center of the channel of the Yellowstone river with a line drawn east and west through the center of section fifteen (15) of township eighteen (18) north, range fifty-seven (57) east; thence east through the center of said section to a point of intersection with the east line of said section; thence south one-half ($\frac{1}{2}$) mile along the east line of the said section fifteen (15), township eighteen (18) north, range fifty-seven (57) east, to the southeast corner of said section; thence east one-half ($\frac{1}{2}$) mile along

the south line of section fourteen (14), township eighteen (18) north, range fifty-seven (57) east; thence south one-half ($\frac{1}{2}$) mile to the center of section twenty-three (23), township eighteen (18) north, range fifty-seven (57) east; thence east one-half ($\frac{1}{2}$) mile to a point of intersection with the east line of said section twenty-three (23); thence south one-half ($\frac{1}{2}$) mile along the east line of said section twenty-three (23), to the southeast corner of said section twenty-three (23); thence east one-half ($\frac{1}{2}$) mile along the south line of section twenty-four (24), of township eighteen (18) north, range fifty-seven (57) east; thence south one-half ($\frac{1}{2}$) mile to the center of section twenty-five (25), township eighteen (18) north, range fifty-seven (57) east; thence one-half ($\frac{1}{2}$) mile east to the east line of said section twenty-five (25); thence south one (1) mile along the west line of sections thirty (30) and thirty-one (31), township eighteen (18) north, range fifty-eight (58) east; thence east one-half ($\frac{1}{2}$) mile to the center of section thirty-one (31), township eighteen (18) north, range fifty-eight (58) east; thence south one (1) mile to the center of section six (6), township seventeen (17) north, range fifty-eight (58) east; thence east one-half ($\frac{1}{2}$) mile to the east line of said section six (6); thence south one-half ($\frac{1}{2}$) mile along the east line of said section six (6); thence east one-half ($\frac{1}{2}$) mile along the south line of section five (5), township seventeen (17) north, range fifty-eight (58) east; thence south one-half ($\frac{1}{2}$) mile to the center of section eight (8), township seventeen (17) north, range fifty-eight (58) east; thence east one-half ($\frac{1}{2}$) mile to the east line of said section eight (8); thence south two (2) miles along the east line of sections eight (8), seventeen (17), and twenty (20), all in township seventeen (17) north, range fifty-eight (58) east; thence east one-half ($\frac{1}{2}$) mile to the center of section twenty-one (21), township seventeen (17) north, range fifty-eight (58) east; thence south one and one-half ($1\frac{1}{2}$) miles through the center of section twenty-eight (28), township seventeen (17) north, range fifty-eight (58) east; to the south line of said section twenty-eight (28); thence east one-half ($\frac{1}{2}$) mile along the south line of section twenty-eight (28), township (17) north, range fifty-eight (58) east, to the southeast corner of said section twenty-eight (28); thence south one (1) mile along the east line of section thirty-three (33), township seventeen (17) north, range fifty-eight (58) east, to the southeast corner of said section thirty-three (33); thence east and along the north line of section one (1), township sixteen (16) north, range fifty-eight (58) east; to the quarter corner on the north line of the said section one (1); thence south three (3) miles through the centers of sections one (1), twelve (12), and thirteen (13), all in township sixteen (16) north, range fifty-eight (58) east, to the south line of said section thirteen (13); thence east one-half ($\frac{1}{2}$) mile along the south line of said section thirteen (13), township sixteen (16) north, range fifty-eight (58) east, to the southeast corner of said section thirteen (13); thence south six and one-half ($6\frac{1}{2}$) miles along the range line between ranges fifty-eight (58) and fifty-nine (59), to the quarter corner on the east line of section twenty-four (24), township fifteen (15) north, range fifty-eight (58) east; thence west one (1) mile through the center of said section twenty-four (24) to the west line of said section twenty-four

(24); thence south two and one-half ($2\frac{1}{2}$) miles along the east line of sections twenty-three (23), twenty-six (26), and thirty-five (35), all in township fifteen (15) north, range fifty-eight (58) east, to the southeast corner of said section thirty-five (35); thence west and along the township line one-half ($\frac{1}{2}$) mile to the quarter corner on the north line of section two (2), township fourteen (14) north, range fifty-eight (58) east; thence south one (1) mile through the center of said section two (2), to the south line of said section two (2); thence west and along the south line of said section two (2), one-half ($\frac{1}{2}$) mile to the southwest corner of said section two (2); thence south one (1) mile and along the east line of section ten (10), township fourteen (14) north, range fifty-eight (58) east, to the southeast corner of said section ten (10); thence west one-half ($\frac{1}{2}$) mile and along the south line of said section ten (10), to the quarter corner on the south line of said section ten (10); thence south one (1) mile through the center of section fifteen (15), township fourteen (14) north, range fifty-eight (58) east, to the south line of the said section fifteen (15); thence west one-half ($\frac{1}{2}$) mile and along the south line of said section fifteen (15), township fourteen (14) north, range fifty-eight (58) east, to the southwest corner of said section fifteen (15); thence south one (1) mile along the west line of section twenty-two (22), of township fourteen (14) north, range fifty-eight (58) east, to the southeast corner of section twenty-one (21), township fourteen (14) north, range fifty-eight (58) east; thence west one-half ($\frac{1}{2}$) mile along the south line of said section twenty-one (21); thence south one-half ($\frac{1}{2}$) mile to the center of section twenty-eight (28), township fourteen (14) north, range fifty-eight (58) east; thence west one-half ($\frac{1}{2}$) mile to the west line of section twenty-eight (28), township fourteen (14) north, range fifty-eight (58) east; thence south one-half ($\frac{1}{2}$) mile along the west line of said section twenty-eight (28) to the southwest corner of said section twenty-eight (28); thence west one-half ($\frac{1}{2}$) mile and along the north line of said section thirty-two (32), township fourteen (14) north, range fifty-eight (58) east, to the quarter corner of the north line of said section thirty-two (32); thence south one (1) mile through the center of said section thirty-two (32), township fourteen (14) north, range fifty-eight (58) east, to the south line of said section thirty-two (32); thence west one-half ($\frac{1}{2}$) mile and along the south line of said section thirty-two (32), to the southwest corner of said section thirty-two (32); thence south one (1) mile and along the east line of section six (6), township thirteen (13) north, range fifty-eight (58) east, to the southeast corner of said section six (6); thence west one (1) mile and along the south line of section six (6), to the southwest corner of the said section six (6); thence south one (1) mile and along the east line of section twelve (12), township thirteen (13) north, range fifty-seven (57) east, to the southeast corner of said section twelve (12); thence west one (1) mile and along the south line of said section twelve (12), to the southwest corner of said section twelve (12); thence south one-half ($\frac{1}{2}$) mile and along the east line of section fourteen (14), township thirteen (13) north, range fifty-seven (57) east, to the quarter corner on the east line of the said section fourteen (14); thence west one-half ($\frac{1}{2}$) mile to the center of the

said section fourteen (14); thence south one-half ($\frac{1}{2}$) mile to a point of intersection with the south line of said section fourteen (14); thence at right angles west one (1) mile along the south line of sections fourteen (14) and fifteen (15), all in township thirteen (13) north, range fifty-seven (57) east, to the quarter corner on the south line of said section fifteen (15); thence south one-half ($\frac{1}{2}$) mile to the center of section twenty-two (22), township thirteen (13) north, range fifty-seven (57) east; thence west one-half ($\frac{1}{2}$) mile to a point on the west line of said section twenty-two (22); thence south one-half ($\frac{1}{2}$) mile along the west line of the said section twenty-two (22), township thirteen (13) north, range fifty-seven (57) east, to the southwest corner of said section twenty-two (22); thence west along the south line of sections twenty-one (21), twenty (20), and nineteen (19), township thirteen (13) north, range fifty-seven (57) east, and along the north line of sections twenty-five (25) and twenty-six (26), township thirteen (13) north, range fifty-six (56) east, to the northwest corner of section twenty-six (26), township thirteen (13) north, range fifty-six (56) east; thence south two (2) miles along the west line of sections twenty-six (26) and thirty-five (35), to the southwest corner of said section thirty-five (35), township thirteen (13) north, range fifty-six (56) east, thence west along the north line of township twelve (12) north, range fifty-seven (57) east, to the northwest corner of said township; thence at right angles south ten (10) miles along the dividing line between ranges fifty-six (56) and fifty-seven (57), to the southwest corner of section nineteen (19), township eleven (11) north, range fifty-seven (57) east; thence nine (9) miles along the section line to the northwest corner of section twenty-seven (27), township eleven (11) north, range fifty-eight (58) east; thence one (1) mile south along the west line of said section twenty-seven (27), to the southwest corner of said section twenty-seven (27); thence east along the section line to the southwest corner of section thirty (30), township eleven (11) north, range fifty-nine (59) east; thence south along the line between ranges fifty-eight (58) and fifty-nine (59) east, to the southwest corner of section six (6), township ten (10) north, range fifty-nine (59) east; thence east along the section line to the point where the south line of section four (4), township ten (10) north, range sixty-one (61) east, intersects the Montana-North Dakota boundary line; thence north along the Montana-North Dakota boundary line to its intersection with a line dividing the north from the south half of township nineteen (19) north, range sixty (60) east; thence west along the section line to the southwest corner of section eighteen (18), township nineteen (19) north, range sixty (60) east; thence south along the line between ranges fifty-nine (59) and sixty (60) east, to the southwest corner of section thirty-one (31), township nineteen (19) north, range sixty (60) east; thence west along the line between ranges eighteen (18) and nineteen (19) north, to an intersection with the center of the Yellowstone river; thence southwesterly, following the center of the channel of the Yellowstone river to the place of beginning. The county seat is Wibaux, Montana.

History: County created by petition and election, effective Aug. 17, 1914, from portions of Dawson and Fallon counties; conflict in northern boundary with Richland; northern boundary fixed by Ch. 24, L. 1915, effective Feb. 19, 1915; bound-

aries extended, Sec. 2, Ch. 139, L. 1917; L. 1919; boundaries defined by Ch. 205, boundary line between Wibaux and Fallon L. 1921; re-en. Sec. 4357, R. C. M. 1921. counties changed and established, Ch. 185,

16-259. (4358) Yellowstone County. Beginning at that point on the Yellowstone river where the west line of section twenty-one (21), in township two (2) south, range twenty-four (24) east, intersects the said river; thence south along the west line of section twenty-one (21), and the west line of sections twenty-eight (28) and thirty-three (33), in said township, to that point on the Clark Fork river where it is intersected by said line; thence in a southwesterly direction along the said Clark Fork river to that point where it is intersected by the west line of section eight (8), in township three (3) south, range twenty-four (24) east; thence south along the west line of said section eight (8) and the west line of sections seventeen (17), twenty (20), twenty-nine (29), and thirty-two (32) of said township, to the southwest corner of section thirty-two (32), township three (3) south, range twenty-four (24) east; thence east along the south line of said township to the southeast corner thereof; thence south along the line between ranges twenty-four (24) and twenty-five (25) east, to the southeast corner of section twenty-four (24), township four (4) south, range twenty-four (24) east; thence east to the northeast corner of section twenty-five (25), township four (4) south, range twenty-six (26) east; thence south to the southwest corner of section nineteen (19), township four (4) south, range twenty-seven (27) east; thence east to the southeast corner of section twenty-four (24), township four (4) south, range twenty-seven (27) east; thence north to the northeast corner of section thirteen (13), township four (4) south, range twenty-seven (27) east; thence east to the southwest corner of section seven (7), township four (4) south, range twenty-nine (29) east; thence north to the northwest corner of section six (6), township four (4) south, range twenty-nine (29) east; thence east to the northwest corner of section six (6), township four (4) south, range thirty (30) east; thence north on the line between ranges twenty-nine (29) and thirty (30) east, to the northwest corner of section six (6), township one (1) south, range thirty (30) east; thence east to the southwest corner of section thirty-one (31), township one (1) north, range thirty (30) east; thence north on the line between ranges twenty-nine (29) and thirty (30) east, to the northwest corner of section thirty (30), township two (2) north, range thirty (30) east; thence east to the northwest corner of section twenty-eight (28), township two (2) north, range thirty-one (31) east; thence north to the northwest corner of section sixteen (16), township two (2) north, range thirty-one (31) east; thence east to the northwest corner of section fourteen (14), township two (2) north, range thirty-one (31) east; thence north to the northwest corner of section two (2), township two (2) north, range thirty-one (31) east; thence east to the northwest corner of section six (6), township two (2) north, range thirty-two (32) east; thence north to the northwest corner of section thirty (30), township three (3) north, range thirty-two (32) east; thence east along the north line of sections thirty (30), twenty-nine (29), twenty-eight (28), twenty-seven (27), twenty-six (26), and twenty-five (25), township three (3)

north, range thirty-two (32) east, to the southwest corner of section nineteen (19), township three (3) north, range thirty-three (33) east; thence north along the line between ranges thirty-two (32) and thirty-three (33) east, to the northwest corner of section six (6), township three (3) north, range thirty-three (33) east; thence east along the line between township three (3) and four (4) north, to the center of the channel of the Big Horn river; thence in a northeasterly direction along the center of the Big Horn river to the point of confluence of the Yellowstone and Big Horn rivers in township five (5) north, range thirty-four (34) east; running thence along the west line of section twenty-two (22), township five (5) north, range thirty-four (34) east, to the northwest corner of said section twenty-two (22); thence west one (1) mile to the northwest corner of section twenty-one (21); thence north one (1) mile to the northeast corner of section seventeen (17); thence west one (1) mile to the northwest corner of section seventeen (17); thence north two (2) miles to the northeast corner of section six (6), township five (5) north, range thirty-four (34) east; thence west one (1) mile to the southeast corner of section thirty-six (36), township six (6) north, range thirty-three (33) east; thence north along the range line two (2) miles to the northeast corner of section twenty-five (25); thence west one (1) mile to the northwest corner of section twenty-five (25); thence north one (1) mile to the northeast corner of section twenty-three (23); thence west one (1) mile to the northwest corner of section twenty-three (23); thence north two (2) miles to the northeast corner of section ten (10); thence west one (1) mile to the northwest corner of section ten (10); thence north one (1) mile to the northeast corner of section four (4), township six (6) north, range thirty-three (33) east; thence west one (1) mile to the southwest corner of section thirty-three (33), township seven (7) north, range thirty-three (33) east; thence north three (3) miles to the northeast corner of section twenty (20); thence west one (1) mile to the northwest corner of section twenty (20); thence north one (1) mile to the northeast corner of section eighteen (18); thence west one (1) mile to the southwest corner of section seven (7); thence north along the range line two (2) miles to the northwest corner of section six (6), township seven (7) north, range thirty-three (33) east; thence west one (1) mile to the southwest corner of section thirty-six (36), township eight (8) north, range thirty-two (32) east; thence north one (1) mile to the northwest corner of section thirty-six (36); thence west one (1) mile to the southwest corner of section twenty-six (26); thence north two (2) miles to the northeast corner of section twenty-two (22); thence west one (1) mile to the northwest corner of section twenty-two (22); thence north two (2) miles to the northeast corner of section nine (9); thence west one (1) mile to the northwest corner of section nine (9); thence north along the west side of section four (4) to the northwest corner of section four (4), township eight (8) north, range thirty-two (32) east; thence west along the second standard parallel north to the southeast corner of lot four (4), in section five (5); thence north to the northeast corner of lot one (1), in section five (5); thence west to the northwest corner of section six (6), township eight (8) north, range thirty-two (32)

east; thence south on the line between ranges thirty-one (31) and thirty-two (32) east, to the southwest corner of section thirty-one (31), township eight (8) north, range thirty-two (32) east; thence west to the northeast corner of section two (2), township seven (7) north, range thirty (30) east; thence south to the southeast corner of said section two (2); thence west to the northeast corner of section ten (10), township seven (7) north, range thirty (30) east; thence south to the southeast corner of said section ten (10); thence west to the northeast corner of section sixteen (16), township seven (7) north, range thirty (30) east; thence south to the southeast corner of said section sixteen (16); thence west to the northeast corner of section twenty (20), township seven (7) north, range thirty (30) east; thence south to the southeast corner of said section twenty (20); thence west to the southwest corner of said section twenty (20); thence south two (2) miles to the southeast corner of section thirty-one (31), township seven (7) north, range thirty (30) east; thence west to the northeast corner of township six (6) north, range twenty-nine (29) east; thence south to the southeast corner of section thirteen (13), township six (6) north, range twenty-nine (29) east; thence west to the northeast corner of section twenty-two (22), township six (6) north, range twenty-seven (27) east; thence south to the southeast corner of said section twenty-two (22); thence west to the southeast corner of section twenty (20), township six (6) north, range twenty-seven (27) east; thence south to the southeast corner of section twenty-nine (29), township six (6) north, range twenty-seven (27) east; thence west to the southeast corner of section twenty-five (25), township six (6) north, range twenty-six (26) east; thence south to the southeast corner of township five (5) north, range twenty-six (26) east; thence west along the first standard parallel north to the northwest corner of section six (6), township four (4) north, range twenty-three (23) east; thence south along the east line of townships three (3) and four (4) north, range twenty-two (22) east, to the southeast corner of township three (3) north, range twenty-two (22) east; thence east along the north line of section six (6), township two (2) north, range twenty-three (23) east, to the northeast corner of said section six (6); thence running south along the east line of sections six (6), seven (7), eighteen (18), nineteen (19), thirty (30) and thirty-one (31), of township two (2) north, range twenty-three (23) east, and one (1) north, range twenty-three (23) east, to the base line; thence west along the base line to the northeast corner of section five (5), township one (1) south, range twenty-three (23) east; thence south along the east line of sections five (5), eight (8), seventeen (17), twenty (20), twenty-nine (29), and thirty-two (32), of township one (1) south, range twenty-three (23) east, to the southeast corner of said section thirty-two (32); thence south along the east line of section five (5), to the northwest corner of section nine (9), township two (2) south, range twenty-three (23) east; thence east along the north line of said section nine (9), to the northeast corner thereof; thence south along the east line of sections nine (9) and sixteen (16), township two (2) south, range twenty-three (23) east, to the northwest corner of section twenty-two (22), said township and range; thence east along the north line of

said section twenty-two (22), to the northeast corner thereof; thence south along the east line of said section twenty-two (22), to the northwest corner of section twenty-six (26), township two (2) south, range twenty-three (23) east; thence east along the north line of said section twenty-six (26), to the northeast corner thereof, thence south along the east line of sections twenty-six (26) and thirty-five (35), to an intersection with the center of the channel of the Yellowstone river; thence in an easterly direction, following the center of the channel of the Yellowstone river to the place of beginning. The county seat is Billings, Montana.

History: County created Feb. 26, 1883, L. 1883, p. 119; extended to include part of Crow Indian reservation, March 5, 1885, L. 1885, p. 74; Sec. 742, 5th Div. Comp. Stat. 1887; boundaries extended March 4, 1891, L. 1891, p. 223; Secs. 4119, 4135, Pol. C. 1895; Carbon county created from part of, March 4, 1895, L. 1895, pp. 49-54; Sweet Grass county created, including part of, March 5, 1895, L. 1895, pp. 54-58; part of Meagher added to by Sec. 8, supra; boundaries extended to include Crow Indian reservation W. of Big Horn river, March 5, 1897, L. 1897, p. 55; Secs.

2807, 2808, 2809, 2833, Rev. C. 1907; Musselshell county created, including part of, Ch. 25, L. 1911; Big Horn county created, including part of, Jan. 13, 1913; Stillwater county created, including part of, March 24, 1913; boundary line with Rosebud county changed, Ch. 159, L. 1917; boundary line between Yellowstone and Carbon fixed by Ch. 75, L. 1919; boundaries defined by Ch. 205, L. 1921; re-en. Sec. 4358, R. C. M. 1921.

See also Secs. 16-260 and 16-261 establishing the boundary line between Yellowstone and Carbon counties.

16-260. (4358.1) Boundary line between Yellowstone and Carbon counties established. That the boundary line between Yellowstone county and Carbon county of the state of Montana, be, and the same is hereby established and shall hereafter be known as follows:

Beginning at that point on the Yellowstone river where the west line of section twenty-one (21), township two (2) south, range twenty-four (24) east, intersects the said river, thence south along the west line of section twenty-one (21) and the west line of sections twenty-eight (28) and thirty-three (33) in said township to that point on the Clark Fork river where it is intersected by said line; thence in a southwesterly direction along the said Clark Fork river to that point thereon where it is intersected by the west line of section eight (8), township three (3) south, range twenty-four (24) east; thence south along the west line of said section eight (8), and the west line of sections seventeen (17) and twenty (20) of said township to the southwest corner of said section twenty (20), township three (3) south, range twenty-four (24) east; thence east along the south line of sections twenty (20) and twenty-one (21) of said township to the southeast corner of said section twenty-one (21) of township three (3) south, range twenty-four (24) east; thence south along the west line of sections twenty-seven (27) and thirty-four (34) of said township to the southwest corner of said section thirty-four (34), township three (3) south, range twenty-four (24) east; thence east along the south line of said township to the southeast corner thereof; thence south along the line between ranges twenty-four (24) and twenty-five (25) east to the southeast corner of section twenty-four (24), township four (4) south, range twenty-four (24) east; thence east along the north line of sections thirty (30) and twenty-nine (29), township four (4) south, range twenty-five (25) east to an intersection with the west boundary line of the Crow Indian reservation, township four (4) south, range twenty-five (25) east;

this point being common to the boundary lines of Carbon county, Yellowstone county and Big Horn county.

History: En. Sec. 1, Ch. 30, L. 1925.

16-261. (4358.2) Alteration of boundaries of Yellowstone and Carbon counties. The boundaries of Yellowstone county are hereby altered to conform to the boundaries of Carbon county as established by this act.

History: En. Sec. 2, Ch. 30, L. 1925.

16-262. (4359) Effect of act. No county not herein mentioned, created, or changed by the present legislative assembly, or now in process of creation by petition and election shall be in any manner affected by the terms of this act.

History: En. Sec. 2, Ch. 205, L. 1921;
re-en. Sec. 4359, R. C. M. 1921.

16-263. (4360) Township and range designations. All township and range designations used in this act are hereby expressly declared to refer to the Montana principal base and meridian, according to the United States government survey thereof.

History: En. Sec. 3, Ch. 205, L. 1921;
re-en. Sec. 4360, R. C. M. 1921.

CHAPTER 3

REMOVAL OF COUNTY SEATS

- Section 16-301. Removal of county seat—petition.
 16-302. Submission to electors—who are taxpayers.
 16-303. Election, notice of, how held and conducted.
 16-304. Voter to vote for place he prefers.
 16-305. Publication of result.
 16-306. Place chosen to be county seat.
 16-307. Statement of result and notice transmitted.
 16-308. No second election to be held within four years.
 16-309. County seat may be removed from time to time.

16-301. (4369) Removal of county seat—petition. Whenever the inhabitants of any county of this state desire to remove the county seat of a county from the place where it is fixed by law, or otherwise, to another place, they may present a petition to the board of county commissioners of their county praying such removal, such place to be named in the petition, and that an election be held to determine whether or not such removal must be made. The petition to remove the county seat of the county from the place where it is fixed by law to another place must be presented to the board of county commissioners at least sixty days prior to any action thereon being taken by the board of county commissioners, and action on said petition by the board of county commissioners must be had at a regular meeting of said board of county commissioners. Such petition must be filed with the county clerk, and the county clerk, immediately upon the filing of said petition, must cause to be printed in every newspaper published within said county a notice to the effect that a petition praying for the removal of said county seat has been filed with the county clerk, and that said petition is open to the inspection of any and all persons

interested therein, and that said petition will be presented to the board of county commissioners at its next regular session for action thereon. No other or additional petition than the one originally filed shall be considered by the board of county commissioners, except that at any time on or before the date fixed for the hearing, any person having signed the original petition for the removal of the county seat may file a statement in writing with the county clerk that he desires to have his name withdrawn from such petition; provided, that not more than one withdrawal shall be permitted by the same person.

History: En. Sec. 4157, Pol. C. 1895; amd. Sec. 1, p. 145, L. 1901; re-en. Sec. 2851, Rev. C. 1907; amd. Sec. 1, Ch. 62, L. 1915; amd. Sec. 1, Ch. 10, L. 1919; re-en. Sec. 4369, R. C. M. 1921. Cal. Pol. C. Sec. 3976.

Operation and Effect

A board of county commissioners exercises judicial functions when it decides whether a petition for the submission of the removal of the county seat to the electors of the county is signed by sufficient number to require such submission. State ex rel. Buck v. Board of Commrs., 21 M 469, 474, 54 P 939.

The words "changing" and "removing" found in the constitution and the statute laws refer to the act of changing or removing a county seat that has been definitely located, and have no reference to a so-called temporary or provisional county seat. State ex rel. Geiger v. Long, 43 M 401, 412, 117 P 104.

Conceding that the selection or removal of a county seat is a purely political function, that function has not been confided to judges of election or to the canvassers of the returns, but to a certain proportion of the qualified electors of the county affected; it rests with the courts to ascertain and decide whether the choice actually made by the requisite proportion of the qualified electors has been duly declared; and, if not, to declare it and make it effective. Poe v. Sheridan County, 52 M 279, 288, 157 P 185.

References

Cited or applied as section 2851, Revised Codes, before amendment, in State ex rel. Powers v. Dale, 47 M 227, 230, 131 P 670; Ainsworth v. McKay, 55 M 270, 271, 175 P 887.

Collateral References

Counties \hookrightarrow 34(2).
20 C.J.S. Counties § 64.
14 Am. Jur. 195, Counties, §§ 18-21.

16-302. (4370) Submission to electors—who are taxpayers. If the petition is signed by sixty-five per cent of the taxpayers of such county, the board of county commissioners must at the next general election submit the question of removal to the electors of the county; provided, that the term "taxpayers" used in this section shall be deemed to mean "ad valorem taxpayers," and that for the purpose of testing the sufficiency of any petition which may be presented to the county commissioners as provided in this section, the county commissioners shall compare such petition with the poll-books in the county clerk's office constituting the returns of the last general election held in their county, for the purpose of ascertaining whether such petition bears the names of sixty-five per cent of the tax-paying voters listed therein; and they shall make a similar comparison of the names signed to the petition with those appearing upon the listed assessment roll of the county for the purpose of ascertaining whether the petition bears the names of sixty-five per cent of the ad valorem taxpayers as listed in said assessment roll; and if such petition then shows that it has not been signed by sixty-five per cent of the voters of the county who are ad valorem taxpayers thereof, after deducting from the said original petition the names of all persons who may have signed such original petition, and who may have filed, or caused to be filed, with the county clerk of said county or the board of county commissioners, on

or before the date fixed for the hearing, their statement in writing of the withdrawal of their names from the original petition, it shall be deemed insufficient, and the question of the removal of the county seat shall not be submitted.

History: En. Sec. 4158, Pol. C. 1895; amd. Sec. 2, p. 146, L. 1901; re-en. Sec. 2852, Rev. C. 1907; amd. Sec. 2, Ch. 10, L. 1919; re-en. Sec. 4370, R. C. M. 1921. Cal. Pol. C. Sec. 3977.

Official Duty Presumed Performed

The official duty devolving upon the commissioners is presumed to have been regularly performed; it is presumed that the board compared the names signed to the petition with the poll-books of the "last election." State ex rel. Stringfellow v. Board of Commrs., 42 M 62, 77, 111 P 144.

Sufficiency of Petition

A petition for the removal of a county seat is sufficient if it is signed by the required number of ad valorem taxpayers of the county, provided all the persons necessary to make up such number are qualified voters. State ex rel. Stringfellow v. Board of Commrs., 42 M 62, 78, 111 P 144.

Under this section the board of county commissioners is limited in its investigation of the sufficiency of a petition for the removal of the county seat to a comparison of the names appearing thereon with the poll-books to ascertain whether the signers are voters, and with the assessment roll,

whether they are taxpayers, and may not, therefore, eliminate from the petition names of persons who have ceased to be legal voters or taxpayers. Ainsworth v. McKay, 55 M 270, 175 P 887.

Where a petition signed by the requisite number of ad valorem taxpayers of a county, who were qualified voters, for the change of a county seat, was submitted to the county commissioners, and was denied because it did not contain the number of taxpayers of the county required by the statute, it must be presumed that the petition was found sufficient, except for the fact that the board claimed that it should contain such number of taxpayers, which was determined to the contrary, in which case there was no discretion for the board to exercise, and mandamus was available to compel them to give legal effect to the petition. State ex rel. Stringfellow v. Board of Commrs., 42 M 62, 78, 111 P 144.

References

Cited or applied as section 4158, Political Code, before amendment, in State ex rel. Buck v. Board of Commrs., 21 M 469, 475, 54 P 939.

Collateral References

Counties \Rightarrow 35(1).
20 C.J.S. Counties § 70.

16-303. (4371) Election, notice of, how held and conducted. Notice of such election, clearly stating the object, must be given, and the election must be held and conducted, and the returns made, in all respects in the manner prescribed by law in regard to the submitting of questions to the electors of a locality under the general election law.

History: En. Sec. 4159, Pol. C. 1895; re-en. Sec. 2853, Rev. C. 1907; re-en. Sec. 4371, R. C. M. 1921. Cal. Pol. C. Sec. 3979.

16-304. (4372) Voter to vote for place he prefers. In voting on the question, each elector must vote for the place in the county which he prefers, by placing opposite the name of the place the mark X.

History: En. Sec. 4160, Pol. C. 1895; re-en. Sec. 2854, Rev. C. 1907; re-en. Sec. 4372, R. C. M. 1921. Cal. Pol. C. Sec. 3980.

References

Cited or applied as section 2854, Revised Codes, in State ex rel. Stringfellow v. Board of Commrs., 42 M 62, 75, 111 P 144.

16-305. (4373) Publication of result. When the returns have been received and compared, and the results ascertained by the board, if a majority of the qualified electors of the county have voted in favor of any particular place, the board must give notice of the results by posting notices thereof in all the election precincts of the county, and by publishing a like notice in a newspaper printed in the county at least once a week for four weeks.

History: En. Sec. 3, p. 146, L. 1901; re-en. Sec. 2855, Rev. C. 1907; amd. Sec. 1, Ch. 27, L. 1921; re-en. Sec. 4373, R. C. M. 1921. Cal. Pol. C. Sec. 3981.

References

Cited or applied as section 2855, Revised Codes, in State ex rel. Stringfellow v. Board of Commrs., 42 M 62, 75, 111 P 144.

16-306. (4374) Place chosen to be county seat. In the notice provided for in the next preceding section, the place selected to be the county seat of the county must be so declared from a day specified in the notice not more than ninety days after the election. After the day named in the notice, the place chosen is the county seat of the county.

History: En. Sec. 4162, Pol. C. 1895; re-en. Sec. 2856, Rev. C. 1907; re-en. Sec. 4374, R. C. M. 1921. Cal. Pol. C. Sec. 3982.

References

Cited or applied as section 2856, Revised Codes, in State ex rel. Powers v. Dale, 47 M 227, 230, 131 P 670; Poe v. Sheridan County, 52 M 279, 288, 157 P 185.

16-307. (4375) Statement of result and notice transmitted. Whenever any election has been held, as provided for in the preceding sections of this chapter, the statement made by the board of county commissioners, showing the result thereof, must be deposited in the office of the county clerk, and whenever the board gives the notice prescribed by section 16-306 of this code, they must transmit a certified copy thereof to the secretary of state.

History: En. Sec. 4163, Pol. C. 1895; re-en. Sec. 2857, Rev. C. 1907; re-en. Sec. 4375, R. C. M. 1921. Cal. Pol. C. Sec. 3983.

16-308. (4376) No second election to be held within four years. When an election has been held and a majority of the votes are not cast for some other place than that fixed by law as the former county seat, no second election for the removal thereof must be held within four years thereafter.

History: En. Sec. 4164, Pol. C. 1895; re-en. Sec. 2858, Rev. C. 1907; re-en. Sec. 4376, R. C. M. 1921. Cal. Pol. C. Sec. 3984.

16-309. (4377) County seat may be removed from time to time. When the county seat of a county has been once removed by a popular vote of the people of the county, it may be again removed from time to time in the manner provided by this chapter.

History: En. Sec. 4, Ch. 146, L. 1901; re-en. Sec. 2859, Rev. C. 1907; re-en. Sec. 4377, R. C. M. 1921. Cal. Pol. C. Sec. 3985.

Collateral References

Counties 36.
20 C.J.S. Counties § 71.

CHAPTER 4

LOCATION OF COUNTY SEATS

- Section 16-401. Meeting and organization of board of commissioners on creation of new county—county clerk.
16-402. Designation of temporary county seat—special election.
16-403. Proceedings after petition for county seat election.
16-404. Division of county into registration and polling precincts.
16-405. Registration of voters.
16-406. Judges of election—ballots, books and records.
16-407. Applicability of general election laws.
16-408. Form of ballot.
16-409. Canvass of returns—result of election.
16-410. Re-election in case of failure to select county seat.

16-411. Applicability of general laws to new counties and officers.

16-412. Submission of question of locating permanent county seat to voters—elections.

16-401. (4378) Meeting and organization of board of commissioners on creation of new county—county clerk. Whenever a county is created hereafter in this state by legislative enactment, it shall be the duty of the persons appointed to the office of county commissioners of such county by the act creating it, to meet at some place in the county, to be agreed upon by a majority of said county commissioners, within fifteen days after the passage of the act creating the county, and then and there organize as a board of county commissioners by electing one of their number chairman.

The person appointed to the office of county clerk in the bill creating the county shall be notified in writing by the county commissioners, or some one of them, of the time and place of said meeting, and he must attend the meeting and act as the clerk thereof and keep a record of the proceedings. If no person is appointed to the office of county clerk by the act creating the county, the commissioners shall at such meeting select some person qualified to hold office of county clerk to act as clerk of such meeting.

History: En. Sec. 1, Ch. 135, L. 1911; re-en. Sec. 4378, R. C. M. 1921.

Operation and Effect

Prior to the passage of this measure, there was no general law by which a so-called temporary county seat could be located, changed, or removed, so that a temporary county seat, once designated, became in fact, permanent. State ex rel. Geiger v. Long, 43 M 401, 412, 117 P 104.

In this act there is no evidence of intention to require incorporation as a

qualification for county seat in the use of the term "city or town." State ex rel. Powers v. Dale, 47 M 227, 231, 131 P 670.

References

Cited or applied as chapter 135, Laws of 1911, in Poe v. Sheridan County, 52 M 279, 288, 157 P 185.

Collateral References

Counties \Rightarrow 47.

20 C.J.S. Counties § 81.

14 Am. Jur. 188, Counties, §§ 6 et seq.

16-402. (4379) Designation of temporary county seat—special election.

(1) Immediately after the organization of the board of county commissioners, as provided in the preceding section, said board shall, by a resolution spread upon the minutes of its proceedings, designate some place within said county as and to be the temporary county seat until the permanent county seat shall be located as hereinafter in this act provided. The place so designated shall be the temporary county seat of said county until the permanent county seat is located by the electors of said county at the general election to be held on the first Tuesday after the first Monday of November of the next even-numbered year after the creation of the county, or at a special election as hereinafter provided.

(2) In the event of a majority of the county commissioners failing to agree upon the location of the temporary county seat, then each county commissioner shall write the name of the place he favors as the temporary county seat on a slip of paper and said slips be inclosed in envelopes of the same size, color, and texture, and shall be deposited in a box or other suitable receptacle, and the county clerk, in the presence of said commissioners, shall draw out one of the said slips. Thereupon the county commissioners shall, by resolution spread upon the minutes, declare the place

named on the slip so drawn by the county clerk to be the temporary county seat of said county.

(3) At said first general election after the creation of the county, it shall be the duty of the board of county commissioners and county clerk to have separate official ballots printed and distributed for the use of the electors at said election; which ballots shall be in the form and contain the same matter as the ballots provided for in section 16-408 of this code, and the provisions of section 16-409 of this code shall apply to and govern the manner of voting and of canvassing said ballots, and the board of county commissioners shall declare the result of such election and the location of the permanent county seat, and said county seat shall be located in the manner and according to the provisions of said section 16-409.

(4) Provided, however, that at any time within six months after the passage of an act creating a new county, a petition or petitions may be filed with the county clerk of the board of county commissioners of such county asking the board to submit the question of the location of the permanent county seat to the electors of the county at a special election to be called and held in the manner hereinafter in this act provided. Said petition or petitions must contain in the aggregate the names of at least one hundred taxpayers, whose names appear upon the assessment-books containing the last assessment of the property situated in such new county, and whose names also appear as registered electors in some registration district established and existing in the territory embraced in the new county at the last general election held therein.

(5) The petition or petitions when filed with the board must also have certificates attached thereto from the county clerk of the county in which the person or persons signing the petition resided before the creation of the new county, certifying that the names of the person signing said petition or petitions appear in the last assessment-books of his county, and also in the registration-books of his county containing the names of the electors registered in the last general election in the districts now embraced in the new county.

History: En. Sec. 2, Ch. 135, L. 1911;
re-en. Sec. 4379, R. C. M. 1921.

Collateral References

Counties \S 28, 29.

20 C.J.S. Counties \S 55-57, 58.

16-403. (4380) Proceedings after petition for county seat election. Upon filing said petition or petitions, duly certified to as provided in the preceding section, with the county clerk of the new county, he must immediately notify the chairman of the board of county commissioners who, upon receipt of such notice, must call a meeting of the board to be held within ten days after the filing of said petition, for the purpose of considering the same. If the board at such meeting finds that said petition conforms to the requirements of and is in accordance with the provisions of the preceding section, it shall at said meeting, by a resolution spread upon its minutes, call a special election of the qualified electors of said county for the purpose of voting upon the question of the location of the permanent county seat.

Said election shall be held on Tuesday and not less than forty nor more than sixty days after the date of calling the same. The board must

issue an election proclamation containing a statement of the time of the election and the question to be submitted. A copy of this proclamation must be published in some newspaper printed in the county, if any, and posted at each place of election at least ten days before the election.

History: En. Sec. 3, Ch. 135, L. 1911;
re-en. Sec. 4380, R. C. M. 1921.

16-404. (4381) Division of county into registration and polling precincts. At the meeting of the board at which the special election is called for the purpose of locating the permanent county seat, the board shall, by resolution spread upon its minutes, divide the county into registration districts and establish polling precincts in the manner provided by law. It must also, at such meeting, make an order designating the house or place within each precinct where the election shall be held. It must also at the same session of the board appoint registry agents for the several registration districts established by it, who must possess the qualifications required by law for registry agents. The county clerk must furnish the said registry agents with books, blanks, and other stationery required for the proper performance of their duties.

History: En. Sec. 4, Ch. 135, L. 1911;
re-en. Sec. 4381, R. C. M. 1921.

(553 to 586). Opinions of Attorney General Vol. 8, Pg. 247.

NOTE.—Sections 16-404 (4381) and 16-405 (4382) relating to registration of electors held impliedly repealed by Ch. 122, Laws of 1915, sections 23-501 to 23-534

Collateral References

Elections⇒48.

29 C.J.S. Elections § 54.

16-405. (4382) Registration of voters. The period for the registration of electors shall be between the hours of nine a. m. and nine p. m. on all legal days from nine a. m. of the fourth Monday prior to the date of said election to nine p. m. of the second following Saturday. It shall be the duty of each registry agent to publish and post notices of the time and places of registration in the manner provided by law for the publication of notices of registration for general elections. No person shall be entitled to register and vote at such special election unless he is a qualified voter of the state of Montana of the age of twenty-one years, and will have been a resident of Montana one year and of the territory embraced within the boundaries of the new county for a period of one hundred and eighty days on the day next preceding the day of such election, and also takes and subscribes to the oath provided in section 479, Revised Codes of Montana.

The general election laws of this state governing the registration of electors and defining the duties of the registry agents shall apply to and govern the registration of electors in elections held under this act in so far as the same do not conflict herewith.

History: En. Sec. 5, Ch. 135, L. 1911;
re-en. Sec. 4382, R. C. M. 1921.

Collateral References

Elections⇒95.

29 C.J.S. Elections §§ 36, 37.

NOTE.—Section 479, referred to above, was repealed by chapter 113, Laws of 1911.

This section held impliedly repealed, see note to sec. 16-404.

16-406. (4383) Judges of election—ballots, books and records. At the same meeting of the board of county commissioners at which the special election for the location of the permanent county seat is called, the board shall appoint three judges of election for each precinct in the county who

shall act as the judges at said election. It shall be the duty of the county clerk to have printed and distributed to the judges of election the necessary ballots, the form of which shall be as provided in sections 16-402, 16-408, and 16-410 of this code, and also supply the judges with the necessary books, records, stationery and ballot-boxes required to hold such election in the manner provided by law.

History: En. Sec. 6, Ch. 135, L. 1911;
re-en. Sec. 4383, R. C. M. 1921.

Collateral References

Elections—51, 163.
29 C.J.S. Elections §§ 59, 155.

16-407. (4384) Applicability of general election laws. The judges appointed for said special election must qualify as required by the general election law, and the polls must be opened and closed, the voting done, the ballots counted, returns made to the board of county commissioners, and all other matters connected with said election carried on and conducted in accordance with and as provided by the general election laws of this state.

History: En. Sec. 7, Ch. 135, L. 1911;
re-en. Sec. 4384, R. C. M. 1921.

Collateral References

Elections—51, 197.
29 C.J.S. Elections §§ 59, 61, 192.

16-408. (4385) Form of ballot. The form of the ballot used at such elections shall be as follows: There shall be a stub across the top of each ballot, and separated therefrom by a perforated line. The part above the perforated line, designated as the stub, shall extend the entire width of the ballot, and shall have a depth of not less than two inches. Upon the face of the stub there shall be printed in what is known as brevier capitals the following instructions:

“To vote this ballot the elector will write in the blank space on the ballot the name of the town or place at which he desires the permanent county seat to be located.”

The ballot below the perforated line shall be in the following form:

“For the permanent county seat of.....county my choice is”; (here insert name of county)

Provided, that any person who, from any cause, is unable to write, may have one of the judges in the presence of another judge write his choice on the ballot.

History: En. Sec. 8, Ch. 135, L. 1911;
re-en. Sec. 4385, R. C. M. 1921.

16-409. (4386) Canvass of returns—result of election. When the name of a town or place in a county shall be so inserted in the blank space on such ballot by an elector, and the ballot has been cast as provided by law, the same shall be deemed a vote for the designated town or place as the location of the permanent county seat of said county. The board of county commissioners of said county shall canvass the returns of said election in the manner provided by law for the canvassing of election returns, and upon such canvassing of returns the town or place found to have received a majority of all votes cast on such questions shall be declared by the board the permanent county seat of the county. The order declaring the result of such election shall be entered of record in the minutes of the proceedings of the board of county commissioners by the county clerk, and

from the date of the declaration of the results of the election the town or place selected shall be and remain, until lawfully changed in the manner provided by law, the permanent county seat of such county. Within ten days after the declaration of the result of such election, all records and county offices of the county, if elsewhere located, must be moved to and remain at the place declared the permanent county seat.

History: En. Sec. 9, Ch. 135, L. 1911; M 411, 419, 214 P 74; State v. Board of County Commrs., 83 M 540, 555, 273 P 290.
re-en. Sec. 4386, R. C. M. 1921.

References

Atkinson v. Roosevelt County et al., 66

16-410. (4387) Re-election in case of failure to select county seat. If no town or place receives a majority of all votes cast on such question, then the town or place receiving the highest number of votes shall be declared by the board and immediately become the temporary county seat of the county, and at the next general election the two towns or places receiving the greatest number of votes at said first election shall be the candidates for the permanent county seat. At said next general election, the county clerk shall have separate ballots in the form provided for in section 16-408 of this code printed and distributed as provided by law containing the names of said candidates for the permanent county seat. On the stub of such ballots shall be printed the following instructions:

"To vote this ballot the elector will place an X in the square before the name of the town he intends to vote for."

The form of such ballots below the perforated line shall be as follows:

<input type="checkbox"/>for the permanent county seat
<input type="checkbox"/>for the permanent county seat

Of said towns or places the one receiving a majority of all the votes cast on such question shall be declared the permanent county seat, and the board of county commissioners must canvass the returns and declare the result, and the county seat must be located in accordance with the provisions of this act.

History: En. Sec. 10, Ch. 135, L. 1911;
re-en. Sec. 4387, R. C. M. 1921.

16-411. (4388) Applicability of general laws to new counties and officers. All laws of general nature applicable to the several counties of the state of Montana and to the officers thereof, and to their powers and duties, shall be applicable to a new county and the officers thereof from and after the creation of the county, except as otherwise provided in this act, or the act creating the county.

History: En. Sec. 11, Ch. 135, L. 1911;
re-en. Sec. 4388, R. C. M. 1921.

Collateral References

Counties—15.
20 C.J.S. Counties § 30.

16-412. (4389) Submission of question of locating permanent county seat to voters—elections. Any county heretofore created, in which the permanent county seat has not been located by valid election held for the purpose of locating the permanent county seat of said county, may have a

special election, for the purpose of voting on such question, called and held under the provisions of this act, or if no special election is held for such purpose, then said question shall be submitted by the county commissioners at the next general election after the passage of this act and in the manner provided herein for the submission of such questions at general elections; provided, however, that no special election shall be called for the purpose of submitting such question unless a petition or petitions containing in the aggregate the names of one hundred taxpaying electors of such county, whose names appear upon the last assessment book, and also on the last registration-books of said county, are filed with the clerk of the board of county commissioners within six months after the passage and approval of this act.

Upon the filing of such petition or petitions within said time, containing the requisite number of taxpaying electors, which must be ascertained by the board from the records of said county, said board must immediately call such special election as herein provided.

If registration districts and polling precincts have already been established in said county, they shall remain the same for such special election, but a new registration shall be had and said special election conducted and the result determined as in this act provided.

The provisions of this section shall not apply in any case where there has been a permanent county seat located and maintained for a period of three years from the date immediately subsequent to the date of the approval of this act, whether the same was located by a legal election or otherwise.

History: En. Sec. 12, Ch. 135, L. 1911;
re-en. Sec. 4389, R. C. M. 1921.

CHAPTER 5

CREATION OF NEW COUNTIES BY PETITION AND ELECTION

- Section 16-501. Creation of new counties—debts and assets prorated—minimum area and valuation.
- 16-502. Basis of taxation upon creation of new county—terms used in law defined.
- 16-503. Cities and towns eligible for county seat.
- 16-504. Petition for creation of new county—attached affidavits—notice and hearing.
- 16-505. Duty of commissioners when findings justify new county—division into township, road and school districts—change of boundaries of election precincts—election—temporary county seat.
- 16-506. Measures to be taken after election—officers—effect of adverse vote.
- 16-507. Officers of new county—judicial district.
- 16-508. State senator to be elected.
- 16-509. Board of county commissioners to be elected.
- 16-510. Commission appointed by governor to adjust indebtedness of old and new counties.
- 16-511. Determination of amount of indebtedness and value of property—taxation.
- 16-512. Compensation and expenses of commissioners.
- 16-513. Assessment and collection of taxes.
- 16-514. School and road funds.
- 16-515. Records and books—furnishing and transcribing.
- 16-516. Transfer of pending actions in district court.
- 16-517. Publication by posting of notice.

- 16-518. State senator and member of house of new county.
- 16-519. Misdemeanor and malfeasance in office.
- 16-520. Repealing and saving clause.

16-501. (4390) Creation of new counties—debts and assets prorated—minimum area and valuation. New counties may from time to time be formed and created in this state from portions of one or more counties, which shall have been created and in existence for a period of more than two years, in the manner set forth and provided in this act; provided, however, that no new county shall be established which shall reduce any county to an assessed valuation of less than twelve million dollars (\$12,000,000.00), inclusive of all assessed valuation as shown by the last preceding assessment; nor shall any new county be established which shall reduce the area of any existing county from which territory is taken to form such new county, to less than twelve hundred square miles of surveyed land, exclusive of all forest reserve and Indian reservations within old counties nor shall any new county be formed which contains an assessed valuation of property less than ten million dollars (\$10,000,000.00), inclusive of all assessed valuation as shown by the last preceding assessment, of the county or counties from which such new county is to be established, nor shall any new county be formed which contains less than one thousand square miles of surveyed land exclusive of all forest reserve land or Indian reservations, not open for settlement, nor shall any line thereof pass within fifteen miles of the court house situate at the county seat of the county sought to be divided; provided, that such county line may be run within a distance of ten miles of a county seat in cases where the natural contour of the county, by reason of mountain ranges or other topographical conditions, is such as to make it difficult to reach the county seat, and in such cases a petition, signed by at least fifty-eight per centum (58%), of the voters in the proposed new county, shall be presented to the judge of the district court in which the county affected is located, asking for the appointment of a commission of five (5) disinterested persons, who shall determine if the topographical conditions are such as to warrant the fixing of the county division lines closer than at fifteen miles from the county seat, as such boundaries are legally fixed and determined at the date of the filing of the petition or petitions referred to in section 16-504 of this code.

Every county which shall be enlarged or created from the territory taken from any other county or counties shall be liable for a prorata proportion of the existing debts and liabilities of the county or counties from which such territory shall be taken, and shall be entitled to a prorata proportion of the assets of the county or counties from which such territory is taken, to be determined as provided by sections 16-502, 16-503 and 16-511.

History: The first new county act was Ch. 112, L. 1911. The first four sections of this act were amended and the rest re-enacted by Ch. 133, L. 1913; Sec. 7 of the act was also amended by Ch. 135, L. 1913. All these acts were repealed and a complete new county law enacted by Ch. 139, L. 1915, which was repealed by Ch. 226, L. 1919. This section en. Sec. 1, Ch. 226, L. 1919; re-en. Sec. 4390, R. C. M. 1921; amd. Sec. 1, Ch. 106, L. 1929.

Operation and Effect

Since enactment of statutes providing for the creation of new counties, the involuntary character of counties in this state is somewhat modified, but the change does not affect their status as political subdivisions of the state for governmental purposes; only incorporated cities and towns are municipal corporations in this state. *Hersey v. Neilson*, 47 M 132, 144, 131 P 30.

References

Act cited or applied as Laws of 1911, p. 205, before amendment, in: State ex rel. Powers v. Dale, 47 M 227, 228, 131 P 670; State ex rel. Dowen v. District Court, 50 M 249, 146 P 467; State ex rel. Furnish v. Mullendore, 53 M 109, 110, 161 P 949; State ex rel. Stevens v. McLeish, 59 M 527, 529, 198 P 357; State v. Poland et al., 61 M 600, 604, 607, 203 P 352; County of Hill v. County of Liberty, 62 M 15, 16 et seq., 203 P 500; State ex rel. Redman v.

Meyers, 65 M 124, 126 et seq., 210 P 1064; Garry v. Martin, 70 M 587, 590 et seq., 227 P 573; State ex rel. Missoula Co. v. Brown et al., 73 M 371, 373, 236 P 548; State ex rel. Foot v. Burr et al., 73 M 586, 587, 238 P 585; State ex rel. School Dist. No. 28 v. Urton, 76 M 458, 459, 248 P 369.

Collateral References

Counties—10, 12, 16.
20 C.J.S. Counties §§ 23, 27, 35.
14 Am. Jur. 188, Counties, §§ 6-13.

16-502. (4391) Basis of taxation upon creation of new county—terms used in law defined. For the purposes of this act the assessed valuation of all property, whether included within the boundaries of a proposed new county, or remaining within the boundaries of any existing county or counties from which territory is taken, shall be fixed and determined on the same basis as is used for the imposition of taxes in the state of Montana, to-wit: By taking that percentage of the true and full value of all taxable property in any county specified by section 84-302.

Whenever in this act the term “assessed valuation” or “valuation based on the last assessment roll” is used, said terms shall be construed as meaning taxable valuation determined as herein provided, not the full and true valuation of property.

History: En. Sec. 1, Ch. 16, Ex. L. 1919; re-en. Sec. 4391, R. C. M. 1921.

585; State ex rel. School Dist. No. 28 v. Urton, 76 M 458, 459, 248 P 369.

References

State ex rel. Missoula Co. v. Brown et al., 73 M 371, 373, 236 P 548; State ex rel. Foot v. Burr et al., 73 M 586, 587, 238 P

Collateral References

Taxation—347.
84 C.J.S. Taxation § 410.

16-503. (4392) Cities and towns eligible for county seat. No city, town, or village shall become the temporary or permanent county seat of any county organization under the provisions of sections 16-501 to 16-520 of this code, or created by an act of the legislative assembly, unless such city or town shall have been incorporated in the manner provided by law, or unless such village shall have been regularly platted and a plat thereof filed in the office of the county clerk and recorder, and there be fifty qualified electors residing within the boundaries of such platted village, and the temporary county seat selected upon the organization of such county shall remain as such county seat until the permanent county seat shall be established as provided by law.

History: En. Sec. 1, Ch. 16, Ex. L. 1919; re-en. Sec. 4392, R. C. M. 1921.

238 P 585; State ex rel. School Dist. No. 28 v. Urton, 76 M 458, 459, 248 P 369.

References

State ex rel. Missoula Co. v. Brown et al., 73 M 371, 373, 236 P 548; State ex rel. Foot v. Burr et al., 73 M 586, 587,

Collateral References

Counties—28.
20 C.J.S. Counties § 55.

16-504. (4393) Petition for creation of new county—attached affidavits—notice and hearing. (1) Whenever it is desired to divide any county or counties and form a new county out of a portion of the territory of such then existing county or counties, a petition shall be presented to the board of county commissioners of the county from which the new county is to be

formed, in case said proposed new county is to be formed from but one county, or to the board of county commissioners of the county from which the largest area of territory is proposed to be taken for the formation of such new county, in case said new county is to be formed from portions of two or more existing counties; and such board of county commissioners shall be empowered and have jurisdiction to do and perform all acts provided for to be done or performed in this act, for each of the several counties from which any proposed territory is to be taken, and shall direct that a certified copy of all orders and proceedings had before such board of county commissioners shall be certified by the county clerk to the board of county commissioners of each of the several counties from which any territory is taken by the proposed new county; and all officers of any such county shall comply with the orders of the board of county commissioners, in the same manner as if said order had been duly made by the board of county commissioners of each respective county from which territory is proposed to be taken. Such petition shall be signed by at least fifty-eight per cent of the qualified electors of the proposed new county, whose names appear on the official registration books and who are shown thereon to have voted at the last general election preceding the presentation of said petition to the board of county commissioners as herein provided; provided, that in cases where the proposed new county is to be formed from portions of two or more counties, separate petition shall be presented from the territory taken from each county; and each of said separate petitions shall be signed by at least fifty-eight per cent of the qualified electors of each of said proposed portions. Such signatures need not all be appended to one paper, but may be signed to several petitions which must be similar in form, and when so signed the several petitions may be fastened together and shall be treated and presented as one petition.

(2) Such petition or petitions shall contain:

1. A particular description of the boundaries of the proposed new county.

2. A statement that no line thereof passes within fifteen miles of the court house situated at the county seat of any county proposed to be divided, except as hereinafter in this act provided.

3. A statement of the assessed valuation of such proposed county as shown by the last preceding assessment, inclusive of all assessed valuation.

4. A statement of the surveyed area in square miles which will remain in the county or counties from which territory is taken to form such new county, after such county is formed, and a statement of the surveyed area in square miles which will be in the new county after formed.

5. The name of the proposed new county.

6. A prayer that such proposed new county be organized into a new county under the provisions of this act.

There shall be attached and filed with said petition or petitions an affidavit of five qualified electors and taxpayers residing within each county sought to be divided, to the effect that they have read said petition and examined the signatures affixed thereto, and they believe that the statements therein are true, and that it is signed by at least fifty-eight per cent of the qualified electors as herein provided, of the proposed new county, or of the

proposed portion thereof, taken from each existing county, where the proposed new county is to be formed from portions of two or more existing counties; that the signatures affixed thereto are genuine; and that each of such persons so signing was a qualified elector of such county therein sought to be divided, at the date of such signing. Such petition or petitions so verified, and the verification thereof, shall be accepted in all proceedings permitted or provided for in this act, as prima facie evidence of the truth of the matters and facts therein set forth. Upon the filing of such petition or petitions and affidavits with the clerk of the said board of county commissioners, said clerk shall forthwith fix a date to hear the proof of the said petitions and of any opponents thereto, which date must be not later than thirty days after the filing of such petition with the clerk of said board. The county clerk shall also, at the same time, designate a newspaper of general circulation published in the old counties, but not within the proposed new county, and also a newspaper of general circulation published within the boundaries of the proposed new county, if there be such, in which the said county clerk shall order and cause to be published, at least once a week for two weeks next preceding the date fixed for such hearing, a notice in substantially the following form:

Notice

Notice is hereby given that a petition has been presented to the board of county commissioners of.....county (naming the county represented by the board of county commissioners with which said petition was filed), praying for the formation of a new county out of portion of the saidcounty and.....county (naming the county or counties of which it is proposed to form the new county), and that said petition will be heard by the said board of county commissioners at its place of meeting (designating the city or town and the day and hour of the meeting so to be held), and when and where all persons interested may appear and oppose the granting of said petition, and make any objections thereto.

Dated at.....at.....Montana.

....., County Clerk.

Said petitioners shall, on or before the date fixed for said hearing, file with the said board of county commissioners a bond to be approved by said board, in an amount of five thousand dollars, payable to the county in which said petition is filed, conditioned that the obligors named in said bond will pay to said county all expenses incurred in the election provided for in this act, not exceeding the amount specified in said bond, in the event that at the election herein provided for more than forty-two per cent of the votes cast at said election are "for the new county of..... (naming the proposed new county)," "No."

(3) At the time so fixed for said hearing, the board of county commissioners shall proceed to hear the petitioners and any opponents and protestants upon the petition or protests filed on or before the time fixed for the hearing. No petition or protest or petition for the exclusion of territory shall be considered unless the same is filed at least one day before the time fixed for the hearing, and such petition for the exclusion of territory

shall contain the names of not less than fifty per cent of the qualified electors who are resident property taxpayers of any territory to be excluded. All such territory being excluded must be in one block, and contain an area of not less than thirty-six square miles, and be totally within one county, and contiguous thereto, and the board of county commissioners may adjourn such hearing from time to time, but not for more than ten days after the time fixed for the hearing, and shall receive the proof to establish or controvert the facts set forth in said petition. No withdrawals of signatures to the original petition for the creation of a proposed county shall be filed or considered which have not been filed with the county clerk on or before the date fixed for the hearing. No withdrawals of any signature from the petition for the exclusion of territory shall be received or considered which are not filed within five days after the filing of the petition for such exclusion of territory.

(4) The board of county commissioners, on the final hearing of such petition or petitions, shall, by a resolution entered on its minutes, determine:

1. The boundaries of the proposed new county, and the boundaries so determined by said board of county commissioners shall be the boundaries of such proposed new county, if it be created as herein provided.

2. Whether the said petition contains the genuine signatures of at least fifty-eight per cent of the qualified electors of the proposed new county as herein required, or in cases where separate petitions are presented from portions of two or more existing counties as herein required, whether each petition is signed by at least fifty-eight per cent of the qualified electors of that portion of each of such existing counties which it is proposed to take into the proposed new county.

3. Whether any line of the proposed new county passes within fifteen miles of the court-house situate at the county seat of any county proposed to be divided, except as hereinbefore provided.

4. Whether the proposed new county will contain property, according to the last preceding assessment, which will equal in amount at least four million dollars, inclusive of all assessed valuation.

5. Whether the area of any existing county from which territory is taken to form such new county will be reduced to less than twelve hundred square miles of surveyed land, by taking the territory proposed to be taken therefrom to form such new county.

6. Whether the area of the proposed new county will contain at least one thousand square miles of surveyed land to form such new county.

7. The class to which said proposed new county after its creation will belong, and the name of said proposed new county, as stated in such petition.

8. Whether the area embraced within the proposed new county will be reasonably compact.

(5) On final hearing the board of commissioners, upon petition of not less than fifty per cent of the qualified electors (as shown by the official registration books on the day of the filing of any such petition) of any territory lying within said proposed new county contiguous to the boundary line of the said proposed new county, and of the old county from which such

territory is proposed to be taken, and lying entirely within a single old county and described in said petition, asking that said territory be not included within the proposed new county, must make such changes in the proposed boundaries as will exclude such territory from such new county, and shall establish and define such boundaries. On final hearing the board of commissioners, upon petition of not less than fifty per cent of the qualified electors who are resident property taxpayers of any territory lying outside said proposed new county, and contiguous to the boundary line of said proposed new county, and of the old county or counties from which such territory is proposed to be included, asking that said territory be included within the proposed new county, must make such changes in the proposed boundaries as will include such territory in such new county, and shall establish and define such boundaries; provided, however, that the segregation of such territory from any old county or counties shall not leave such county or counties with less than twelve million dollars of assessed valuation, based upon the last assessment-roll; provided, that no change or changes so made shall result in reducing the valuation of the proposed new county to less than an assessed valuation of ten million dollars, inclusive of all assessed valuation; and provided, further, that no change shall be made which shall leave the territory so excluded separate and apart from and without the county of which it was formerly a part. Petitions for exclusion shall be disposed of in the order in point of time in which they are filed with the clerk of the board of county commissioners, and on final determination of boundaries no changes in the boundaries originally proposed shall be made except as prayed for in said petition or petitions, or to correct clerical errors or uncertainties.

History: En. Sec. 2, Ch. 226, L. 1919; re-en. Sec. 4393, R. C. M. 1921.

NOTE.—Wording of this section changed to conform to amendment of section 16-501 by Sec. 1, Ch. 106, Laws 1929.

Counter Petition for Exclusion

The board of county commissioners, which is intrusted with the duty of passing upon the sufficiency of the petition required to be filed to effect the elimination of certain territory from a proposed new county, must read it in connection with the original petition for the creation of such county; and if thus, by any fair intendment, a description of the territory sought to be eliminated may be arrived at, it is the duty of the board to give the intention of the petitioners full force and effect. *State v. Board of Comms.*, 44 M 51, 60, 61, 118 P 804.

Id. The fact that a board of county commissioners, in erroneously rejecting a petition seeking the elimination of certain territory from the area of a proposed new county as insufficient, acted in a quasi-judicial capacity is not any defense to the issuance of mandamus.

Id. A board of county commissioners, in passing upon the sufficiency of the petition, is presumed to understand the method

pursued by the government in its surveys of public land, and is chargeable with knowledge of the territory included within its own county, as well as its boundaries.

Id. The petition for an elimination of certain territory from the area included within the boundaries of a proposed new county, must contain a description of the territory sought to be eliminated, and a prayer for the relief demanded. The other facts may be made to appear by evidence upon the hearing, without being specially alleged.

A valid petition describing the territory to be included within the proposed new county was the very foundation of the proceedings for the creation of a new county. While under certain circumstances the board of county commissioners was authorized to exclude territory, there was not any authority in the board to incorporate within the boundaries of a proposed new county territory which was not included in the petition praying for its creation, or to exclude territory unless a proper petition for withdrawal thereof was presented. *State ex rel. Jacobson v. Board of County Comms.*, 47 M 531, 537, 134 P 291.

In determining whether a petition for the exclusion of territory from a county

proposed to be created was signed by 50 per cent of the qualified electors therein, the board of county commissioners may resort to whatever competent evidence it has at hand, including the great register of voters. *State ex rel. Lang v. Furnish*, 48 M 28, 35, 134 P 297.

A recital in the affidavit verifying a petition for the elimination of certain territory from the area included within the boundaries of a proposed new county, that fifty per cent of the qualified electors of the territory sought to be withdrawn had signed such petition, was sufficient *prima facie* showing of that fact. *State v. Board of Commrs.*, 44 M 51, 68, 118 P 804. But this is not so where the petition is unaccompanied by such affidavit, in which case it may not be taken as *prima facie* evidence of such facts. *State ex rel. Lang v. Furnish*, 48 M 28, 38, 134 P 297.

A counter-petition for the exclusion of territory from a proposed new county must contain the signatures of at least fifty per cent of the qualified electors resident in the territory sought to be excluded, and the burden is on the counter-petitioners to show that fact on the hearing. *State ex rel. Lang v. Furnish*, 48 M 28, 37, 134 P 297; *State ex rel. Wood v. Board of County Commrs.*, 49 M 165, 170, 140 P 728.

The decision in this case is rigidly confined to counter-petitions for exclusion, and does not in terms or effect apply to original petitions for the creation of new counties. *State ex rel. Wood v. Board of County Commrs.*, 49 M 165, 167, 140 P 728. See also *State ex rel. Fadness v. Eie*, 53 M 138, 145, 146, 162 P 164.

Since the statute does not require the verification of counter-petitions, and does not authorize the acceptance of it as probative, the counter-petitions, though verified, cannot be given any evidentiary value. *State v. Board of County Commrs.*, 49 M 165, 171, 140 P 728; *State ex rel. Arthurs v. Board of County Commrs.*, 44 M 51, 68, 118 P 804, explained by the above case.

A verification to a counter-petition asking for the exclusion of territory sought to be included in a proposed new county, which merely averred that each affiant believed that the counter-petition was signed by at least fifty per cent of the qualified electors of the territory sought to be excluded, was of no probative value as to the facts alleged. *State v. Board of County Commrs.*, 49 M 165, 170, 171, 140 P 728.

In enacting this statute, it was competent for the legislature to prescribe the order in which an exclusion petition and an inclusion petition should be considered by the board, but it failed to do so. It did, however, create the board a special

tribunal, and clothed it with authority to hear the petitions and determine them, and in the absence of legislative restrictions, this necessarily involved the authority to determine which of the two should be considered first. Apparently the legislature referred this question to the sound discretion of the board, and in the absence of fraud its action thereon is not subject to judicial control by mandamus. *State ex rel. Koefod v. Board of Commrs.*, 56 M 355, 360, 185 P 147.

Notice of Hearing

Held, on certiorari, that publication of notice of hearing on petitions for the creation of a new county required by this act, in certain newspapers for at least once a week for two weeks next preceding the date fixed for it, is jurisdictional, and that therefore failure of publication in one of the papers designated in the week immediately preceding the date of the hearing was fatal to jurisdiction and rendered all subsequent proceedings, including the election, invalid. *State ex rel. Stevens v. McLeish*, 59 M 527, 529, 198 P 357.

Id. Designation by the county clerk of a newspaper by the wrong name, in which to publish notice of the date of hearing of petitions for the creation of a new county, amounted to noncompliance with the statutory direction in that regard.

Id. The requirement of this act that notice of the hearing of new county petitions shall be published "at least once a week for two weeks next preceding the date fixed for such hearing" means two weeks immediately preceding the hearing.

The board of county commissioners is without jurisdiction to proceed with a hearing of a petition for the creation of a new county unless publication of the notice as required by this section has been made; if not so made and the board proceeds with the hearing, its action is void. *Garry v. Martin*, 70 M 587, 591, 227 P 573.

Id. Held, under the rule that where a notice is required to be published at least once a week for a period next preceding a certain date, the word "for" means "throughout" or "during the continuance of" the period prescribed, that the provision of this section, requiring publication of notice of hearing of a petition for the creation of a new county "at least once a week for two weeks next preceding the date fixed for such hearing" means that two full weeks' notice, fourteen days, shall be given, and that therefore publication made for a shorter period of time is insufficient.

One Block

The requirement that territory sought to be excluded from a proposed new county

must be in one block—the word “block” implying solidity or compactness—was not met by a petition describing an irregularly shaped tract distributed over fourteen townships, the exterior boundaries of which ran back and forth, in all directions of the compass, alternately including and excluding small tracts, so threaded together as to preserve its continuity, and including those against the creation of the new county and excluding those favoring it. *Woodward v. Moulton et al.*, 57 M 414, 189 P 59.

Id. The interest of the legislature in enacting the provision that territory sought to be excluded from a proposed new county must be in one block, held to have been that a block should be mapped out, irrespective of the personnel of those residing within it, the majority of the residents thereof to determine whether, as a whole and not as individuals, they go with the new or remain with the old county.

Qualified Electors

In computing the number of signatures the petition must bear, the board must take into consideration only those who are qualified electors at the time of the signing of the petition and the number of electors who are shown to have been disqualified must be deducted from the total number residing in the proposed county. *State ex rel. Bogy v. Board of County Commrs.*, 43 M 533, 538, 117 P 1062; *State ex rel. Fadness v. Eie*, 53 M 138, 145, 162 P 164.

The expression “qualified electors,” means persons who possess the necessary constitutional qualifications, and not electors whose names appear on the great register of voters. *State ex rel. Lang v. Furnish*, 48 M 28, 32, 134 P 297.

Id. The burden of establishing the number of qualified electors residing in territory sought to be excluded from a proposed new county is upon the petitioners seeking exclusion, and not upon the proponents of the new county.

Taxpayer

A “taxpayer” within the meaning of this section, which requires petitions for the creation of a new county to be verified by five resident taxpayers, is one who owns property within the county and who pays, and is subject to and liable for, a tax. *State ex rel. Woodward v. Moulton et al.*, 57 M 414, 189 P 59.

Id. Where the owner of personalty listed it and paid taxes thereon, failure of the assessor to place his name on the tax-roll, or the fact that the property was mistakenly assessed in the name of a newspaper of which he was the owner, did not have the effect of disqualifying him as a “taxpayer” as above defined.

Verified Petition Prima Facie Evidence

Applying the provisions of subdivision 6 of this section by analogy to proceedings for the consolidation of school districts, held that a verified petition for such consolidation was prima facie evidence that it contained a majority of the resident freeholders of a district affected at the time it was filed. *Swaim v. Redeen*, 101 M 521, 531, 55 P 2d 1.

When Protest Must Be Filed

Under this section, petitions for the exclusion of territory and protests against the exclusion must, but protests against the creation of a new county need not, be filed at least one day before the date set for hearing to entitle them to consideration by the board of county commissioners, it being sufficient if such latter protests are filed on or before the time fixed for the hearing. *State ex rel. Faragher v. Moulton et al.*, 68 M 219, 221, 224, 216 P 804.

Withdrawal From Petition

In the absence of legislative expression to the contrary, signers of a petition may withdraw their names at any time before final action thereon; and the board of county commissioners was in error in refusing to consider withdrawals from petitions theretofore filed asking the exclusion of certain territory from a proposed new county upon the ground that the withdrawals of signatures, though filed before final action, had not been presented until after the date fixed for the hearing. *State ex rel. Lang v. Furnish*, 48 M 28, 35, 36, 134 P 297.

Id. The matter of the creation of a new county must be determined on the case as made upon the date fixed for the hearing, save as it may be affected by subsequent withdrawals before final action taken; therefore, protests against its creation, or petitions for the exclusion of territory from within its proposed boundaries filed after the date fixed for the hearings, may not be entertained by the board of county commissioners.

Held, that the right of one who had signed a petition for the creation of a new county and then signed a withdrawal of his name therefrom, to thereafter and before the hearing withdraw from the withdrawal is not absolute, and therefore no clear legal duty being imposed upon the board of county commissioners to give effect to the withdrawal from the withdrawal, mandamus does not lie to compel it to do so. *State ex rel. Faragher v. Moulton et al.*, 68 M 219, 221, 224, 216 P 804.

References

Cited or applied as section 2, chapter

226, Laws of 1919, in State ex rel. Koe-fod v. Board of Commrs., 56 M 355, 360, 185 P 147; County of Hill v. County of Liberty, 62 M 15, 16 et seq., 203 P 500; State ex rel. Missoula Co. v. Brown et al., 73 M 371, 373, 236 P 548; State ex

rel. School Dist. No. 28 v. Urton, 76 M 459, 248 P 369.

Collateral References

Counties  13.

20 C.J.S. Counties § 28.

16-505. (4394) Duty of commissioners when findings justify new county—division into township, road and school districts—change of boundaries of election precincts—election—temporary county seat. (1) If the said board of county commissioners determine that the formation of said proposed new county will not reduce any county from which any territory is taken to an assessed valuation of less than twelve million dollars, inclusive of the assessed valuation, nor the area thereof to less than twelve hundred square miles of surveyed land, and that the proposed new county contains property of an assessed valuation of at least ten million dollars, inclusive of all assessed valuation, and that the proposed new county has an area of at least one thousand square miles of land, and that no line of said proposed new county passes within fifteen miles of the court house situate at the county seat of any county proposed to be divided, except as hereinbefore provided, and that said petition contains the genuine signatures of at least fifty-eight per cent of the qualified electors of the proposed new county, or in cases where separate petitions are presented from portions of two or more existing counties (as herein required), that each of said petitions contain the genuine signatures of at least fifty-eight per cent of the qualified electors of that portion of the proposed new county from which it is taken, then the said board of county commissioners shall divide the proposed new county into a convenient number of township, road, and school districts, and define their boundaries and designate the names of such districts.

(2) Said board of county commissioners shall also, if necessary for the purpose of the election hereinafter provided for, change the boundaries of the election precincts in said old county or counties to make the same conform to the boundaries of the proposed new county; provided, that the boundary lines of no such precinct shall extend beyond the boundary lines of the then existing county in which it is located, and from which the territory is proposed to be taken; and said board shall appoint election officers to act at said election and to be paid by said board.

(3) Within two weeks after its determination of the truth of the allegations of said petition as aforesaid, the said board of county commissioners shall order and give proclamation and notice of an election to be held on a specified day in the territory which is proposed to be taken for the new county, not less than ninety days nor more than one hundred and twenty days thereafter, for the purpose of determining whether such territory shall be established and organized into a new county; and for the election of officers and location of a county seat therefor, in case the vote at such election shall be in favor of the establishment and organization of such new county. All qualified electors residing within the proposed new county who are qualified electors of the county or counties from which territory is taken to form such proposed new county, and who have resided within the limits of the proposed county for a period of more than six months next preceding the day of election, and who are registered under the provisions of

the registration laws of the state, shall be entitled to vote at said election. Registration and transfers of registration shall be made and shall close in the manner and at a time provided by law for registration and transfers of registration for a general election in the state of Montana.

(4) Such proclamation and notice of election shall be published at least once a week for three weeks before the holding of such election, in some newspaper of general circulation published in the territory which is proposed to be taken for the new county, and a copy thereof shall be mailed immediately by the county clerk of the county in which the petition is filed to the county clerk of each county from which territory is taken for the proposed new county. Such proclamation and notice shall require the voters to cast ballots which shall contain the words, "For the new county of..... (giving the name of the proposed new county)" "Yes," and "For the new county of..... (giving the name of the proposed new county)," "No," and each voter desiring to vote for the establishment and organization of said new county shall mark a cross (X) opposite the words, "For the new county of.....," "Yes," in the manner now required by law in other elections, and each voter desiring to vote against the establishment and organization of said new county shall mark a cross (X) opposite the words, "For the new county of.....," "No," in the manner now required by law in other elections; and shall also contain the names of persons to be voted for to fill the various elective offices designated in said proclamation for counties of the class to which said proposed county will belong, as determined by the board of county commissioners as herein otherwise provided.

(5) There shall also be printed upon said ballot the words, "For the county seat," and the names of all cities or towns which may have filed with the county clerk a petition signed by at least twenty-five qualified electors, nominating any city or town within the proposed new county for the county seat, and the voter shall designate his choice for county seat by marking a cross (X) opposite the name of the city or town for which he desires to cast his ballot. At the special election to be held, as provided in this act, the question of the election of the county seat is hereby provided to be submitted to the qualified electors of the proposed new county, and the majority of all the votes cast therefor shall determine the election thereon. In case any city or town fails to receive a majority of all the votes cast, then the city or town receiving the highest number of all votes cast shall be designated as the temporary county seat, and in case any city or town is not the choice of the election for the county seat by a majority of all the votes cast, the question of choice between the two cities or towns for which the highest number of votes shall have been cast shall be submitted in like manner to the qualified electors at the next general election thereafter. When the county seat shall have been selected as herein provided, it shall not thereafter be changed except in the manner provided by law.

(6) The proclamation calling the election and the notice thereof provided for in this act shall be made and given exclusively by the board of county commissioners with which is filed the said petition for the formation and establishment of such new county, and such board shall cause the clerk of said county to furnish to the officers of each precinct in such proposed

new county all ballots, poll list, tally lists, registers for voters' signatures, ballot-boxes, and other election supplies and equipment necessary to conduct such election, and which are not hereinafter specifically directed to be furnished by the clerk of another county or counties. Such election shall be governed and controlled by the general election laws of the state, so far as the same shall be applicable, except as herein otherwise provided. The returns of all elections for the creation of the county, and for officers and for location of the county seat as provided for in this act, shall be made to and canvassed by the board of county commissioners of the county from which the largest area is taken by the proposed county.

(7) The county clerk of each county from which territory is taken for the proposed new county shall, not less than five days before the date of such election, furnish to each board of election within said proposed new county, a copy of the official register for the precincts of such proposed new county as are within their respective counties, and the copies of indexes thereof required by law containing the names of all persons who were qualified electors at the last general election before the date of such election.

All returns of election herein provided for shall be made to the board of county commissioners calling such election.

All nominations of candidates for the office required to be filled at said election shall be made in the manner provided by law for the nomination of candidates by petition.

The provisions of the election laws relating to preparation, printing, and distribution of sample ballots, except the provisions of said laws relating to primary elections in this state, shall have application to any election provided for in this act.

History: En. Sec. 3, Ch. 226, L. 1919; re-en. Sec. 4394, R. C. M. 1921.

NOTE.—Wording of this section changed to conform to section 16-501.

Operation and Effect

After an order calling an election to determine whether a new county should be created had been made and the board of county commissioners clothed with jurisdiction had adjourned sine die, it was without power to grant a rehearing. *State v. Board of County Commrs.*, 49 M 165, 172, 140 P 728.

The matter of dividing a new county into school districts being lodged in the discretion of the commissioners of the old county out of which the new one is created, a court cannot, upon finding that the discretion had been erroneously exercised, substitute its discretion and establish the boundaries so as to exclude territory which should not have been included, or hold the order valid as to the portion properly included and invalid as to the other. *State ex rel. School Dist. No. 28 v. Urton*, 76 M 458, 459, 248 P 369.

Id. Held, on mandamus, that where upon the creation of a new county the territory embraced within a school district

for many years existed in one of the two old counties out of which the new one was created, was cut in two, causing it to lie partly in the new county and partly in the old, and the county commissioners charged with the duty of dividing the new county into school districts did not properly perform it but left the boundaries of the district in question as they were before the creation of the new county, the district ipso facto became a joint one, and therefore refusal of the county treasurer of the old county in which a portion of the district lay to transmit to the treasurer of the new county the funds collected by him as taxes upon the property within that portion for school purposes, was wrongful.

References

State ex rel. Redman v. Meyers, 65 M 124, 126 et seq., 210 P 1064; *Garry v. Martin*, 70 M 587, 590, 227 P 573; *State ex rel. Foot v. Rogge et al.*, 80 M 1, 7, 257 P 1029.

Collateral References

Counties—13, 14.
20 C.J.S. Counties §§ 28, 29.

16-506. (4395) Measures to be taken after election—officers—effect of adverse vote. (1) If, upon the canvass of the votes cast at such election, it appears that fifty-eight per cent of the votes cast are "For the new county of.....," "Yes," the board of county commissioners shall, by a resolution entered upon its minutes, declare such territory duly formed and created as a county of this state, of the class to which the same shall belong, under the name of.....county, and that the city or town receiving the highest number of votes cast at said election for county seat shall be the county seat of said county until removed in the manner provided by law, and designating and declaring the person receiving respectively the highest number of votes for the several offices to be filled at said election, to be duly elected to such offices. Said board shall forthwith cause a copy of its said resolution, duly certified, to be filed in the office of the secretary of state, and ninety days from and after the date of such filing said new county shall be deemed to be fully created, and the organization thereof shall be deemed completed, and such officers shall be entitled to enter immediately upon the duties of their respective offices upon qualifying in accordance with law and giving bonds for the faithful performance of their duties, as required by the laws of the state. The clerk of the board of county commissioners with which said petition was filed, as herein provided, must immediately make out and deliver to each of said persons so declared and designated to be elected, a certificate of election authenticated by his signature and the seal of said county. The persons elected members of the board of county commissioners and the county clerk shall immediately, upon receiving their certificates of election, assume the duties of their respective offices.

(2) The board of county commissioners shall have authority to provide a suitable place for the county officers, and to purchase such supplies as may be deemed necessary for the proper conduct of the county government. All other officers take office ninety days after the filing of the resolution herein provided for with the secretary of state. All the officers elected at said election, or appointed under this act, shall hold their offices until the time provided by general law for the election and qualification of such officers in this state, and until their successors are elected and qualified, and for the purpose of determining the term of office of such officers, the years said officers are to hold office are to be computed respectively from and including the first Monday after the first day of January following the last preceding general election. If, however, upon such canvass it appears that more than forty-two per cent of the votes cast at said election are "For the new county of.....," "No," the board of county commissioners canvassing said vote as provided herein shall pass a resolution in accordance therewith, and thereupon the proceedings relating to division of such county or counties shall cease; and no other proceedings in relation to any other division of said old county or counties shall be instituted for at least two years after such determination.

History: En. Sec. 4, Ch. 226, L. 1919; re-en. Sec. 4395, R. C. M. 1921.

Operation and Effect

Held, that though the legislature in the

new counties act (this section) did not declare that where all the members of the board of county commissioners must be elected at the creation of a new county, none holding over as members of the board

of the parent county because of their residence in the proposed new county, they shall be elected for terms of two, four and six years to comport with the intention of the people in amending section 4, article XVI of the Constitution, it did declare that they should hold office until the time provided by general law for the election of such officers, and not until the next general election, and thereby intended that when under the general law a term should not expire with the general election, the

commissioner elected should hold over such general election. State ex rel. Foot v. Rogge et al., 80 M 1, 9 et seq., 257 P 1029.

Id. Chapter 106, Laws of 1925 (secs. 16-508 and 16-509 of this code), providing that county commissioners elected at a special election for the creation of new counties shall hold office until the next general election, held, in the nature of an amendment to this section, which not being retroactive, has no effect upon a special election held in 1924.

16-507. (4396) Officers of new county—judicial district. At the election provided for in section 16-505 of this code, there shall be chosen such county, township, and district officers as are now or may hereafter by general law be provided for in counties of the class to which the said new county is determined to belong, as herein provided; provided, that all duly elected, qualified and acting officers of the county or counties, who may reside within the proposed new county, shall be deemed to be officers of said new county if they file with the board of county commissioners, whose duty it shall be to call the election, within five days after the final hearing and determination of said petition for such proposed new county, their intention to become officers of said proposed new county, and the board of county commissioners issuing the proclamation of any election, as in this act provided, shall omit providing for the election of any such officers as may have filed their declaration as herein provided; and provided, also, that all duly elected, qualified, and acting justices of the peace and constables residing within the proposed new county at the time of the division of such county into townships, as hereinbefore in section 16-505 provided, shall hold office as such justices of the peace or constables in said county for the remainder of the term for which they were elected on qualifying as justices of the peace or constables for the respective townships in which they reside, when said townships are organized as provided in this act; provided, further, that all duly elected, qualified, and acting school trustees residing within the proposed new county at the time of the division of such county into school districts, as hereinbefore in section 16-505 provided, shall hold office as school trustees in said new county for the remainder of the term for which they were elected on qualifying as school trustees for the respective districts in which they reside, as said districts are organized as provided by this act. Each person elected or appointed to fill an office of such new county under the provisions of this act shall qualify in the manner provided by law for such officers, except as herein otherwise provided, and shall enter upon the discharge of the duties of his office within such time as herein provided, after the receipt of the certificate of his election. Each of such officers may take the oath of office before any officers authorized by the laws of the state of Montana to administer oaths, and the bond of any officer from which a bond is required shall be approved by any judge of the district court of the district to which such new county is attached for judicial purposes. The officers elected or appointed under the provisions of this act shall each perform the duties and receive the compensation now provided by general law for the office to which he has been appointed or elected in the counties of the class to which such new county shall have been

determined to belong, as herein provided under the general classification of counties in this state.

Said new county, when created and organized in pursuance of the provisions of this act, shall be attached to such judicial district as may be designated by the governor of the state of Montana, in a proclamation to be issued by him, designating such new county as attached to the particular judicial district for judicial purposes.

History: En. Sec. 5, Ch. 226, L. 1919;
re-en. Sec. 4396, R. C. M. 1921.

Operation and Effect

In view of the provision of this section, that all officers of a county out of which a new county is to be created, residing in the proposed new county shall be deemed officers of the new county if within five days after determination on the petition for the creation of a new one they shall indicate their intention to become officers of the new county, and the board of com-

missioners shall then omit providing for the election of such officers, it would seem that the proclamation for the election of officers of the new county should be made after five days from the determination on the petition. State ex rel. Foot v. Rogge et al., 80 M 1, 6, 257 P 1029.

Collateral References

Counties⌚63; Courts⌚45.

20 C.J.S. Counties § 101; 21 C.J.S. Courts § 136.

16-508. (4396.1) State senator to be elected. At the special election held for the purpose of voting on the creation of a new county, a state senator shall be elected, who will hold office until the next general election.

History: En. Sec. 1, Ch. 106, L. 1925.

Collateral References

States⌚28(1).

81 C.J.S. States § 33.

16-509. (4396.2) Board of county commissioners to be elected. At the special election held for the purpose of voting on the question of the creation of a new county, a board of county commissioners shall be elected, who shall hold office until the next general election.

History: En. Sec. 2, Ch. 106, L. 1925.

Operation and Effect

This section, providing that county commissioners elected at a special election for the creation of new counties, shall hold office until the next general election, held, in the nature of an amendment to section

16-506, which, not being retroactive, has no effect upon a special election held in 1924. State ex rel. Foot v. Rogge et al., 80 M 1, 11, 257 P 1029.

Collateral References

Counties⌚41.

20 C.J.S. Counties § 75.

16-510. (4397) Commission appointed by governor to adjust indebtedness of old and new counties. It shall be the duty of the persons elected to or continuing to hold the office of county commissioners of said new county to meet at the county seat thereof within five days after all of them shall have qualified, and upon organization of said board of county commissioners it shall notify the governor of the state of the organization of said county, and thereupon it shall be the duty of the governor to appoint three persons, one of whom shall be a resident and a taxpayer within the new county, and no two of whom shall be from any one county; the three persons so appointed shall form and be a board of commissioners. Such commissioners shall, within ten days after the notice of the appointment, meet at the county seat of the new county and organize by electing from their number a chairman, and also elect a secretary who must not be a member of said commission. Thereafter such commission may meet at such place or places as it may select. A majority of such commissioners shall constitute a

quorum for the transaction of business. Said commission shall have power to compel by citation or subpoena, signed by their president and secretary, the attendance of such persons and the production of such books and papers before said commission as may be required in the performance of the duties imposed by this act, except that the official records of any county or counties from which said new county was formed shall in no case be taken away from the county seat of said county. It shall be the duty of the sheriff of any county to execute in his county all lawful orders and citations of the said commission; and for any services so performed the sheriff shall be allowed the same fees as are allowed to him for services in civil actions; and all witnesses attending before said commission shall be entitled to the same compensation and mileage as is allowed to witnesses in courts of record; provided, that no witness shall be excused from attendance at the time and place mentioned in said order or citation by reason of the failure of the officer making such service to tender to such witness his fees and mileage in advance.

History: En. Sec. 6, Ch. 226, L. 1919;
re-en. Sec. 4397, R. C. M. 1921.

References

Cited or applied as section 6, chapter 133, Laws of 1913, in *State ex rel. Furnish v. Mullendore*, 53 M 109, 111, 161 P 949.

16-511. (4398) Determination of amount of indebtedness and value of property—taxation. (1) Said board of commissioners shall immediately after its organization ascertain the costs of the election held hereunder, and apportion the same pro rata among each of the counties from which territory was taken to form such new county; shall ascertain the indebtedness of each county from which territory was taken to form the new county, as the same existed at the time when the result of the election was declared by the board of county commissioners, as hereinbefore provided, and also ascertain the total value of all property at the time belonging to each of said counties from which territory was taken and situated within the limits of said old counties, respectively. It shall also ascertain the assessed value of all property in each of the original old counties from which territory was so taken, according to the last completed assessment made for said county, and also the assessed value, under the same assessment, of all property within the territory of the new county which shall have been taken from the old county or counties from which said new county was formed. They shall then find the difference between the amount of the indebtedness of the old county and the value of the property belonging to the old county at the date of the declaration of the result of said election, as hereinbefore provided, and if such indebtedness exceeds the value of such property belonging to the old county, the new county shall pay to the old county a due proportion thereof, to be determined as follows:

“As said assessed value of the property in the old county is to the said assessed value of the property in the territory by this act to be incorporated within the new county from said old county, so is the amount of said excess to the amount to be paid by said new county to said old county.”

(2) Said board of commissioners shall certify forthwith to the board of county commissioners of the new county, and the old counties thereby affected, the amount constituting the due proportion of said excess payable

by such new county to each of them; also the value of any property belonging to each old county at the time when said division took effect (as hereinbefore provided), which is situated in the new county. The sum of said ascertained value of said last-mentioned property added to the ascertained proportion of said excess which the new county is to pay the old county, and its proportion of the expense of said election as aforesaid, shall be an indebtedness from the new county to the old county, and the said property situated as aforesaid in the new county shall upon settlement therefor, as provided in this act, become the property of the new county; and the old county shall pay the entire indebtedness against it, and the expense of said election shall be paid by the county calling such election, and any other county affected thereby shall pay its proportion thereof, as hereinbefore provided. The proceedings in this section required to be taken in the ascertainment and adjustment of property rights and debts shall be had and taken as between said new county and each of the counties from which territory is taken to form said new county, in the manner and at the ratio in said section provided.

(3) If, upon the settlement between the old and the new county as herein provided for, the new county shall be found to be indebted to the old county, or either of the old counties, the money necessary to pay said indebtedness shall be raised by a tax levied upon the property contained in said new county, and said new county shall pay the same; provided, however, that such payment by said new county may be made in not more than three equal annual payments, or by funds to be derived from the sale of bonds of said new county, as may be determined by a resolution of the board of county commissioners of said new county, adopted within one year after the receipt of the statement from the board of commissioners, as aforesaid, of the amount or amounts due from it. If the value of the property belonging to the old county exceeds the indebtedness of the old county, then the old county shall pay to the new county a due proportion of such excess, which proportion shall be determined by the board of commissioners, and shall be paid by the old county to the new county in the same manner and subject to the same conditions herein provided for payment by the new county to the old county, when the indebtedness of the old county exceeds the value of the property in the old county. In the determination of the value of county property all buildings and their furniture, real estate, road tools, and machinery, and all steel bridges which may have been constructed and in use for a less period than ten years, shall be taken into consideration by the said commissioners.

Delinquent taxes due to the old county against property situated in the new county shall be transcribed in and collected by the new county.

History: En. Sec. 7, Ch. 226, L. 1919; re-en. Sec. 4398, R. C. M. 1921.

Constitutionality

In proceedings for the organization of a new county, the board of county commissioners is required to act as a quasi judicial tribunal, and this constitutes no invasion of the constitutional provisions which lodge the judicial power of the state in its courts. *State ex rel. Arthurs v.*

Board of County Commrs., 44 M 51, 71, 118 P 804; *State ex rel. Jacobson v. Board of Commrs.*, 47 M 531, 536, 134 P 291; *State ex rel. Lang v. Furnish*, 48 M 28, 33, 134 P 297.

Delinquent Taxes

Under the new counties act, providing for the apportionment of property and debts between a new and the old situated in that portion of the parent county or

counties incorporated in the new county, which are delinquent upon creation of the new one or were delinquent and remain unpaid for previous years, are collectible by and belong to the new county. (See Opinion on Motion for Rehearing.) *County of Hill v. County of Liberty*, 62 M 15, 16 et seq., 203 P 500.

Id. Delinquent taxes paid on property incorporated in a new county, in the interim between the passing of the resolution by the board of commissioners of the parent county and the expiration of the ninety-day period after its filing with the secretary of state, belong to the parent and not to the new county.

Property of the County

Generally speaking, bridges are not such county property as that their value shall enter into consideration in the adjustment of the indebtedness of the old county with the new one. A bridge is to be treated as but a portion of a public highway. *State ex rel. Foster v. Ritch*, 49 M 155, 156, 157, 140 P 731.

"Property of the county" within the meaning of section 3, article XVI, Constitution, under which, when a new county is created, the net indebtedness of the old county, its ratable proportion of which the new county must pay, is to be determined by deducting from its total indebtedness the value of all property of the old county, held to mean such property as a county holds and can sell. *State v. Poland et al.*, 61 M 600, 203 P 352.

Id. Held, that a partly finished bridge constructed with funds obtained by a bond issue is not such county property as it may sell, and therefore cannot be taken into consideration as county property in the adjustment of indebtedness between an old and a new county.

Since a completed and used bridge belongs to the state and therefore is not "property of the county" within the meaning of section 3, article XVI, Constitution, prescribing the method by which, in the creation of a new county out of an old one, the proportion of the net indebtedness of the old county chargeable to the new one shall be ascertained, the legislature was without power to authorize the commissioners appointed to adjust the indebtedness between a new and an old county (as it did by the enactment of section 7, chapter 139, Laws of 1915) (since repealed) to take into consideration steel bridges constructed and in use for a period of less than ten years, in determining the value of county property. *State ex rel. Missoula Co. v. Brown et al.*, 73 M 371, 373, 236 P 548.

When Mandamus Is Proper to Compel Adjustment of Indebtedness

Mandamus is the proper remedy to compel commissioners appointed to adjust county indebtedness between an old and a new county to reassemble and correctly apportion such indebtedness; the fact of their adjournment being immaterial. Such proceedings should be brought in the name of the county, and not by the board of county commissioners in their official capacity. *State ex rel. Furnish v. Mullendore*, 53 M 109, 116, 117, 161 P 949.

Id. Error committed by a board of commissioners appointed to adjust the indebtedness between an old and a newly created county, which is a function judicial in character, in taking bridges into consideration as county property, constitutes error within jurisdiction not correctible by certiorari, even though provision is not made for an appeal or some other mode of review of the board's action.

Held, that where the board of commissioners of a county a portion of which was thereafter included in a new county, in order to obtain favorable action by the electors of that portion on a proposed issue of road bonds, passed a resolution, amounting to a promise merely, that in the event the bonds were authorized, a certain portion of the receipts would be devoted to road improvement in their district, their breach of trust in thereafter failing to carry out their promise could not be remedied by writ of mandate to compel the board of adjusters of the indebtedness between the old and the new county to charge the old county with the amount the district should have received under the resolution, the new counties act (Laws 1919, Ch. 226) (16-501 et seq.) not authorizing the adjusters to take such action. *State v. Poland et al.*, 61 M 600, 203 P 352.

Where two counties out of which a third was created, made no objection to the report of the commissioners appointed to adjust the indebtedness between the counties, and with knowledge of mandamus proceedings instituted by the new county to have the board's findings reviewed, did not intervene though they were represented by their respective county attorneys who took part in the hearing, but waited until final decision in such proceeding and until the new county had incurred expense in the issuance of bonds to pay the indebtedness due the parent counties, and then commenced proceedings to compel the board of adjustment to reassemble and correct its findings, they were guilty of laches warranting dismissal of the proceedings. *State ex rel. Cascade Co. v. Poland et al.*, 66 M 286, 291, 213 P 900.

The matter of dividing a new county into school districts being lodged in the

discretion of the commissioners of the old county out of which the new one is created, a court cannot, upon finding that the discretion had been erroneously exercised, substitute its discretion and establish the boundaries so as to exclude territory which should not have been included, or hold the order valid as to the portion properly

included and invalid as to the other. State ex rel. School Dist. No. 28 v. Urton, 76 M 458, 459, 248 P 369.

Collateral References

Counties \hookrightarrow 16(1, 2).

20 C.J.S. Counties §§ 35, 36.

14 Am. Jur. 192, Counties, § 13.

16-512. (4399) Compensation and expenses of commissioners. Members of the board of commissioners provided for under this act shall receive a compensation of not to exceed eight dollars per day for every day they are actually employed under the provisions of this act, all of which expenses, together with the reasonable expenses of stationery, postage, and incidental expenses, shall be borne in equal proportions by the counties affected by such division, including said new county, and the amounts payable by each county shall be paid by the treasurers of the respective counties, after the same shall have been presented to and allowed by the board of county commissioners, as is provided by law for claims against any county.

History: En. Sec. 8, Ch. 226, L. 1919;
re-en. Sec. 4399, R. C. M. 1921.

16-513. (4400) Assessment and collection of taxes. After the creation of a new county, as herein provided, its officers shall proceed to complete all proceedings necessary for the assessment or collection of the state and county taxes for the then current year, and all acts and steps theretofore taken by the officers of the old county or counties prior to the creation of the new county shall be deemed and taken as having been performed by the officers of the new county for the benefit of the new county; and upon the creation of the new county it shall be the duty of the officers of the old county or counties to immediately execute and deliver to the board of county commissioners of such new counties copies of all assessments or other proceedings relative to the assessment and collection of the current state and county taxes of property in such new county. Such copies shall be filed with the respective officers of the new county who would have the custody of the same if the proceedings had been originally had in the new county, and such certified copies shall be taken and deemed as originals and original proceedings in the new county, and all proceedings therein recited shall be taken and deemed as original proceedings in the new county, and shall have the same effect as if the proceedings therein stated had been had at the proper time and in the proper manner by the respective officials of the new county; and the officials of the new county are hereby authorized and directed to proceed thenceforth with the assessment and collection of said taxes as if the proceedings originally had in the old county or counties had been originally had in the new county.

History: En. Sec. 9, Ch. 226, L. 1919;
re-en. Sec. 4400, R. C. M. 1921.

Collateral References

Taxation \hookrightarrow 297.

84 C.J.S. Taxation § 352.

16-514. (4401) School and road funds. The county superintendent of schools of the old county, or each of the old counties, respectively, shall furnish the county superintendent of schools of the new county with a certified copy of the last school census of the different school districts in the territory

set apart to form the new county, and shall certify to the board of county commissioners the amount due; and said board shall order a warrant drawn on the treasurer of the new county for all the money that is or may be due by any apportionment or otherwise to the different school districts embraced in the new county from his county; and the county treasurer shall certify to the county commissioners the amount due in the different road funds, and the county commissioners shall order a warrant drawn on the treasurer of their county in favor of the new county for all money that is or may be due by apportionment or otherwise to the different road and district funds in the territory set apart to form the new county from their county, which said amounts shall be properly credited in both counties. And whenever, in the formation of a new county, a road or school district has been divided, the board of county commissioners shall, by resolution, direct the treasurer to transfer the proper proportionate amount of the money remaining in the fund of such district to the treasurer of the new county.

History: En. Sec. 10, Ch. 226, L. 1919; 40 C.J.S. Highways § 176; 78 C.J.S. re-en. Sec. 4401, R. C. M. 1921. Schools and School Districts § 21.

Collateral References

Highways \Rightarrow 99 $\frac{1}{4}$; Schools and School Districts \Rightarrow 19(1).

16-515. (4402) Records and books—furnishing and transcribing. The board of county commissioners of any new county formed as aforesaid must provide suitable books, and have transcribed from the records of the old county or counties all such parts thereof as relate to or affect property, or the title thereof, situated in the new county, and said records, when so transcribed and certified, as herein provided, shall have the same force and effect as such original records; the said county commissioners shall have full power and authority to contract for transcribing of records as now provided by law; provided, that all chattel mortgages, renewals of chattel mortgages, articles of incorporation, contract notes, sheriff certificates of sale, liens, and original affidavits of registration, which may affect or relate to property or persons situate within the new county, shall be by the county clerk of the old county delivered to the county clerk of the new county, and be preserved by said county clerk of the new county as permanent files of such new county; and provided, further, that the files of all actions in the office of the clerk of the district court of the old county, whether reduced to judgment or pending, for the recovery of the possession of, quieting the title to, or for the enforcement of liens upon, or any other actions affecting real estate lying wholly in the new county shall be, by the clerk of the district court of the old county, delivered to the clerk of the district court of the new county to be kept and preserved by him as permanent files of such new county, to the end that only the minutes and other entries in books kept by the clerk of the district court need be transcribed.

History: En. Sec. 11, Ch. 226, L. 1919; re-en. Sec. 4402, R. C. M. 1921; amd. Sec. 1, Ch. 75, L. 1925.

16-516. (4403) Transfer of pending actions in district court. All actions pending in the district court of the old county or counties for the recovery of the possession of quieting title to, or the enforcement of liens

upon, or any other actions affecting real estate lying wholly in the new county shall forthwith upon the delivery of the files in said action to the clerk of the district court of the new county, as provided in section 16-515, be transferred to the district court in which the new county may be attached for judicial purposes, and thereafter shall be subject to the same laws as if said action had been originally brought in the district court of the new county.

History: En. Sec. 12, Ch. 226, L. 1919;
re-en. Sec. 4403, R. C. M. 1921; amd. Sec.
2, Ch. 75, L. 1925.

Collateral References
Courts↔486.
21 C.J.S. Courts § 502.

16-517. (4404) Publication by posting of notice. Whenever in this act publication of any notice is provided for, and no newspaper of general circulation is published within the territory in which said notice is required to be published, notice shall be given by posting copies of such notices in at least ten public places in such territories for the same length of time said notice was required to be published.

History: En. Sec. 13, Ch. 226, L. 1919;
re-en. Sec. 4404, R. C. M. 1921.

Collateral References
Notice↔11.
66 C.J.S. Notice § 13.

16-518. (4405) State senator and member of house of new county. The territory within the limits of any new county, until otherwise provided by law, shall be entitled to representation in the state senate by one state senator; and to representation in the house of representatives by one member of the house of representatives.

History: En. Sec. 14, Ch. 226, L. 1919;
re-en. Sec. 4405, R. C. M. 1921.

Collateral References
States↔27.
81 C.J.S. States § 31.

16-519. (4406) Misdemeanor and malfeasance in office. Any member of the board of county commissioners, or any other officer who unlawfully and knowingly violates any of the provisions of this act, or fails or refuses to perform any duty imposed upon him hereunder, shall be guilty of a misdemeanor and of malfeasance in office, and shall be deprived of his office by a decree of a court of competent jurisdiction, after trial and conviction.

History: En. Sec. 15, Ch. 226, L. 1919;
re-en. Sec. 4406, R. C. M. 1921.

Collateral References
Counties↔45, 67.
20 C.J.S. Counties §§ 78, 108.

16-520. (4407) Repealing and saving clause. All acts and parts of acts in conflict herewith are hereby repealed, with the exception: This act shall not apply in any cases whereby the election has been held under the act passed by the fifteenth legislative session for the creation of counties and a majority vote has been cast in favor thereof, but the provisions of this act shall be deemed in full force and effect so far as they may affect any proposed new county now in process of creation, unless said new county can comply with the requirements of this act; and it is hereby made the duty of the board of county commissioners which may have ordered any election in pursuance of existing laws to immediately make an order annulling and setting aside all further proceedings in relation to such proposed new county, including an order to nullify and set aside any election order there-

tofore made; provided, if any order is made nullifying and setting aside any election as provided in this section, any bond which may have been given in pursuance with the provisions of law relating to the costs of election for the creation of any proposed new county shall be deemed void, and no liability shall be incurred thereunder.

History: En. Sec. 16, Ch. 226, L. 1919;
re-en. Sec. 4407, R. C. M. 1921.

Collateral References

Counties↔2.

20 C.J.S. Counties § 11.

CHAPTER 6

TRANSFER OF RECORDS AND ACTIONS ON CREATION OF NEW COUNTIES—JURY LISTS

- Section 16-601. New counties entitled to records.
 16-602. County commissioners to have records transcribed.
 16-603. Commissioners' power to contract.
 16-604. Payment for transcribing.
 16-605. Certificate of transcript.
 16-606. Transcribed records to be filed.
 16-607. Effect of transcribed records.
 16-608. New counties—transfer of action affecting real estate.
 16-609. Same—jurisdiction of court.
 16-610. Same—fees of clerk.
 16-611. Transcript of records when territory detached from one municipality and added to another.
 16-612. Apportionment of indebtedness and credits where territory is detached and annexed.
 16-613. Collection of taxes in territory taken from one municipality and added to another.
 16-614. Transfer of records on creation of new county.
 16-615. Preparation of list of delinquent taxes not heretofore transcribed on creation of new county.
 16-616. Notice to persons currently assessed.
 16-617. Redemption when by payment of original tax only.
 16-618. Duty of county treasurer of such new county.
 16-619. Transcription of records, how made.
 16-620. Old county to clear tax liens—certification.
 16-621. County treasurer and other taxing officials relieved from certain liability.
 16-622. Jury-list for current year in new counties.
 16-623. Duty of clerk of court in the old county to certify jury-list to clerk of new county.
 16-624. Time within which jury-list to be made and certified by clerks of old county.
 16-625. Removal of names from jury-box of old county.
 16-626. Duty of clerk of court in new county regarding jury-lists.

16-601. (4408) New counties entitled to records. Any county or counties of the state of Montana that shall heretofore have been or may hereafter be formed from portions of another county, shall be entitled to have the county records affecting or relating to any and all property situate in the county segregated, transcribed from the books of the original county and made a part of the records of the county segregated.

History: En. Sec. 1, p. 217, L. 1893; re-en. Sec. 4166, Pol. C. 1895; re-en. Sec. 2860, Rev. C. 1907; re-en. Sec. 4408, R. C. M. 1921.

ical Code, in State ex rel. Lambert v. Coad, 23 M 131, 139, 57 P 1092.

Collateral References

Counties↔16(1).

20 C.J.S. Counties § 35.

References

Cited or applied as section 4166, Polit-

16-602. (4409) County commissioners to have records transcribed. It shall be the duty of the county commissioners of any county heretofore formed, or that may be hereafter formed from part of another county, to have so much of the records of the original county as relates to the property situate within the segregated county transcribed as hereinafter provided.

History: En. Sec. 2, p. 217, L. 1893; 2861, Rev. C. 1907; re-en. Sec. 4409, R. C. re-en. Sec. 4167, Pol. C. 1895; re-en. Sec. M. 1921.

16-603. (4410) Commissioners' power to contract. Said county commissioners shall have full power and authority to contract for transcribing the records relating to all property situate within the boundaries of the segregated county, and for that purpose the person or persons engaged in the work of transcribing such records shall have access to all records of the county or counties from which segregated.

History: En. Sec. 3, p. 217, L. 1893; Collateral References
re-en. Sec. 4168, Pol. C. 1895; re-en. Sec. Counties 113(4).
2862, Rev. C. 1907; re-en. Sec. 4410, R. C. 20 C.J.S. Counties § 179.
M. 1921.

16-604. (4411) Payment for transcribing. Payment for transcribing such records shall be made by the county contracting therefor, by a warrant or warrants payable out of the general fund of such county.

History: En. Sec. 4, p. 217, L. 1893; Collateral References
re-en. Sec. 4169, Pol. C. 1895; re-en. Sec. Counties 164.
2863, Rev. C. 1907; re-en. Sec. 4411, R. C. 20 C.J.S. Counties § 248.
M. 1921.

16-605. (4412) Certificate of transcript. When the transcript of such records herein provided for shall be completed and approved by the county commissioners of such county, they shall be delivered to the county clerk and recorder of the county from which such records were taken, and it shall be the duty of such county clerk and recorder to compare the records so transcribed with the original records as the same appear on the record books of the said original county. The county clerk and recorder to whom the said transcript shall be delivered for comparison shall certify under oath that the said transcribed records are full, complete and exact copies of the original records, and the said county clerk and recorder shall be entitled to six dollars per day for his time actually spent in comparing the said records, to be paid out of the general fund of the county requiring such comparison and certificate.

History: En. Sec. 5, p. 218, L. 1893; 2864, Rev. C. 1907; re-en. Sec. 4412, R. C. re-en. Sec. 4170, Pol. C. 1895; re-en. Sec. M. 1921.

16-606. (4413) Transcribed records to be filed. All records so transcribed, when certified to as being full, complete, and correct, shall be delivered to the county clerk and recorder of the segregated county, and shall be filed in the office of the county clerk and recorder of such segregated county, and shall thereupon become and be a part of the records of such county.

History: En. Sec. 6, p. 218, L. 1893; 2865, Rev. C. 1907; re-en. Sec. 4413, R. C. re-en. Sec. 4171, Pol. C. 1895; re-en. Sec. M. 1921.

16-607. (4414) Effect of transcribed records. A certified copy of the records so transcribed and filed in the office of the county clerk and re-

order of any segregated county may be introduced in evidence, and shall have the same force and effect as certified copies of original records.

History: En. Sec. 7, p. 218, L. 1893; re-en. Sec. 4172, Pol. C. 1895; re-en. Sec. 2866, Rev. C. 1907; re-en. Sec. 4414, R. C. M. 1921.

References

Cited or applied as section 4172, Political Code, in *State ex rel. Lambert v. Coad*, 23 M 131, 139, 57 P 1092.

16-608. (4415) New counties—transfer of action affecting real estate.

In all counties heretofore created out of any other county, and in all counties that may be hereafter created, wherever there has been an action or proceeding begun, affecting any real property situate within such new county, whether such action has been prosecuted to judgment or not, upon a written motion being filed by any person or persons interested in such real property so affected by such action or proceeding, requesting the transfer of the files and papers and records of such action or proceeding to the office of the clerk of the district court of the new county, wherein such real property is situated, it shall be the duty of the judge of the district court, in which said action or proceeding was originally begun, to order that a transfer of all the files and papers of such action or proceeding be made to the office of the clerk of the district court of the new county in which such real property is situated; and when such an order of transfer is made, it shall be the duty of the clerk of the district court, wherein such action or proceeding was originally instituted, to transmit all of the files and papers in such action or proceeding, together with a certified copy of all minutes of the court relating to such action or proceeding, to the clerk of such new county in which the real property, the subject-matter of such action or proceeding, is situated; and said clerk of the district court of the new county in which said property is situated shall, upon the receipt of such files and papers and certified copies of the minutes of the court, file said papers in his office as transferred files from the original county, and shall enter and transcribe upon his records any final judgment or decree or order contained in such files or papers or records so transferred.

History: En. Sec. 1, Ch. 20, L. 1907; Sec. 2867, Rev. C. 1907; re-en. Sec. 4415, R. C. M. 1921.

Collateral References

Venue Ⓒ=47.
67 C.J. Venue § 243.

16-609. (4416) Same—jurisdiction of court. Upon the receipt and filing of the files and papers in any action or proceeding transferred to a new county heretofore created, or that may be hereafter created, in accordance with the provision of this act, the district court of such new county, in which such files and papers shall have been transferred, shall have the same jurisdiction with reference to said real property for the enforcement of any decree, judgment, or order that may have been entered therein, or for such other proceedings as may be necessary in such action or proceeding, as the district court had in the county wherein such action or proceeding was originally begun.

History: En. Sec. 2, Ch. 20, L. 1907; Sec. 2868, Rev. C. 1907; re-en. Sec. 4416, R. C. M. 1921.

Collateral References

Venue Ⓒ=80.
67 C.J. Venue § 350 et seq.

16-610. (4417) Same—fees of clerk. The clerk of the district court wherein such action or proceeding was originally begun shall be entitled

to receive, for transferring such files and papers and certified copy of the minutes and records entered in connection with such action or proceeding, no other fee than at the rate of twenty cents per folio for copies of minutes made by him, and fifty cents for certificate fee; the clerk of the district court of the new county, to which such files and papers may be transferred in accordance with the provisions of this act, shall not be entitled to any fees for the filing of such transferred records, but for the filing of any papers that may be filed thereafter in connection with such action or proceeding or for the issuance of any writs or other papers, such clerk shall be entitled to charge the same fees as now provided by law.

History: En. Sec. 3, Ch. 20, L. 1907;
Sec. 2869, Rev. C. 1907; re-en. Sec. 4417,
R. C. M. 1921.

Collateral References
Clerks of Courts 24.
14 C.J.S. Clerks of Courts § 16.

16-611. (4418) Transcript of records when territory detached from one municipality and added to another. When any territory shall be detached from any county, city, or town in this state and annexed to any other county, city, or town it shall be the duty of the proper officer of such county, city, or town to which said territory so detached shall be annexed, to demand from the proper officer of the county, city, or town having custody of the public records of the territory so detached, a transcript of all public records pertaining to such territory; and it shall be the duty of such officer from whom they shall be demanded to furnish such authenticated transcripts of all such records in his office, which shall be paid for after they shall be so furnished by the county, city, or town to which said territory so detached shall be annexed.

History: En. Sec. 1, Ch. 36, L. 1911;
re-en. Sec. 4418, R. C. M. 1921.

16-612. (4419) Apportionment of indebtedness and credits where territory is detached and annexed. When any territory shall be detached from any county, city, or town of this state, and the same shall be annexed to any other county, city, or town therein, such county, city, or town to which the same shall be annexed shall be liable to the county, city, or town from which the territory was so detached for its just share of liabilities and indebtedness, and shall receive a just share of the credits from the county, city, or town, from which the same shall have been detached, which shall be apportioned by ascertaining what ratio the portion detached bears to the territory from which the same was detached, and the last prior assessment shall be used as a basis in determining the same.

History: En. Sec. 2, Ch. 36, L. 1911;
re-en. Sec. 4419, R. C. M. 1921.

20 C.J.S. Counties § 36; 62 C.J.S. Municipal Corporations § 78.

Collateral References

Counties 16(2); Municipal Corporations 36(3).

16-613. (4420) Collection of taxes in territory taken from one municipality and added to another. When any territory shall be detached from any county, city, or town in this state and be annexed to any other county, city, or town therein, it shall in no manner invalidate or interfere with the collection of taxes in such territory, and they shall be collected by and the

returns made to the county to which said territory is attached in the manner provided by law for levying and collecting taxes.

History: En. Sec. 3, Ch. 36, L. 1911; 20 C.J.S. Counties § 35; 62 C.J.S. Municipal Corporations § 79.
re-en. Sec. 4420, R. C. M. 1921.

Collateral References

Counties \S 16(1); Municipal Corporations \S 36(4).

16-614. (4421) Transfer of records on creation of new county. Any new county heretofore formed or that may hereafter be formed shall be entitled to all records, maps, plats, and charts of any old county, any part of whose territory is included in such new county, which records, maps, plats, or charts relate to the classification of lands for taxation purposes and apply exclusively to territory included in such new county, and such records, maps, plats, and charts shall be delivered by the officer or board of such old county to the corresponding officer or board of such new county upon proper receipt therefor, and shall be made and become a part of the records of such new county, to all intents and purposes the same as if such records, maps, plats, and charts had been originally prepared and made by such new county; and provided, further, that in the event territory is taken from one county and added to another county such plats and records covering such territory taken, shall be transferred to the enlarged county; provided, that if any portion of the cost of preparing such records, maps, plats, or charts remain unpaid, said new county or enlarged county shall pay its proportionate share of such cost as may be determined by the board of commissioners of the old county.

History: En. Sec. 1, Ch. 201, L. 1921;
re-en. Sec. 4421, R. C. M. 1921.

16-615. Preparation of list of delinquent taxes not heretofore transcribed on creation of new county. From and after the effective date of this act the county commissioners of any county heretofore formed from any county or counties in this state, hereinafter referred to as "new counties," may cause to be transcribed from the delinquent tax records of such county or counties from which such new county was formed, a list of all delinquent taxes which were in existence and a lien upon lands in the new county at the time of its creation, and which have not heretofore been transcribed, and which lien has not been heretofore released by the payment of such delinquent taxes. Such list shall show the description of the lands upon which the taxes were delinquent, the original amount of the tax and the tax sale certificate number under which said land was struck off to the parent county or counties, and the name of the person to whom such lands were assessed, and if such tax sale certificate has been assigned by the county, the name and address of the assignee as shown in such assignment. Upon completion of such transcription, such list shall be delivered to the treasurer of the new county.

History: En. Sec. 1, Ch. 122, L. 1945.

16-616. Notice to persons currently assessed. Upon receipt of such information by the treasurer of the new county, said treasurer shall, within a reasonable time thereafter, but not later than the date when the next

current tax notices are required to be mailed out, notify the person or persons to whom said lands are currently assessed, except in cases hereinafter referred to, of such delinquency and the manner in which it may be paid as hereinafter provided.

History: En. Sec. 2, Ch. 122, L. 1945.

16-617. Redemption when by payment of original tax only. That at any time not later than the first day of July, 1947, any lawful redemptioner including any owner, mortgagee or other person having a legal or equitable interest in said real estate or any part thereof, heretofore struck off to the parent county for delinquent taxes, and when no assignment of said delinquent tax sale certificate has been made, and no subsequent sale has been made in the new county, shall be permitted to redeem said property from said tax sale or sales by paying the original amount of the tax, without payment of any interest or penalty thereon.

History: En. Sec. 3, Ch. 122, L. 1945.

16-618. Duty of county treasurer of such new county. After transcription of said record of delinquent taxes has been made, it shall be the duty of the county treasurer of the new county to collect said delinquent taxes in the manner provided by law, and the treasurer of the parent county shall have no further authority in relation to the collection of said taxes. All payments for delinquent taxes hereinbefore referred to shall be apportioned between the parent county and the new county in the manner provided for the apportionment of taxes by the law regulating the creation of new counties by petition and election, or as provided by the law creating any particular county.

History: En. Sec. 4, Ch. 122, L. 1945.

16-619. Transcription of records, how made. The transcription of records herein provided for shall be made and payment therefor shall be had in the manner provided by sections 16-601 to 16-626, inclusive. All the provisions of said sections not inconsistent with the terms of this act are hereby made applicable to the transcription of said records and the disposal of the delinquent taxes herein referred to.

History: En. Sec. 5, Ch. 122, L. 1945.

16-620. Old county to clear tax liens—certification. In all cases where, since its creation, the new county has applied for and received tax deed to any property on which a lien existed in the parent county by reason of delinquent taxes, upon certification of that fact by the county commissioners of the new county, the county commissioners of the parent county shall, by order entered in its minutes, release and cancel such lien and certify its action to the board of county commissioners of the new county, which certificate shall be filed and properly indexed in the records of the new county and shall operate to clear the title to the property therein described of any cloud thereon existing by reason of such tax delinquency in the parent county.

History: En. Sec. 6, Ch. 122, L. 1945.

16-621. County treasurer and other taxing officials relieved from certain liability. County treasurers, boards of county commissioners, and

other county taxing officials and their bondsmen are hereby relieved from any and all obligation by reason of the failure of said officials to notify the owners of the lands hereinbefore referred to, of the existence of such tax delinquencies, or for the failure to apply for tax deeds, or any acts in conjunction herewith, when the same has been barred by statutes of limitation.

History: En. Sec. 7, Ch. 122, L. 1945.

16-622. (4422) Jury-list for current year in new counties. Whenever a new county has been or may hereafter be created out of territory formerly embraced in any existing county or counties of the state, the jury-list for such new county for the current year, and until the regular jury commission for such new county shall certify for the succeeding year the new jury-list in accordance with the provisions of sections 93-1401 to 93-1406 of this code, shall be as follows:

History: En. Sec. 1, Ch. 129, L. 1919;
re-en. Sec. 4422, R. C. M. 1921.

16-623. (4423) Duty of clerk of court in the old county to certify jury-list to clerk of new county. The clerk of court of the county from which said new county may be segregated, or in the event of such new county being segregated from two or more counties, the clerks of court of each of such counties shall take the names of such persons as appear upon the jury-list for such year, which may have been certified to him or to them by the jury commission or commissions of his or their respective county or counties to be residents of the territory embraced in such new county, and shall certify the same to the clerk of court of the new county. Such names shall then constitute the jury-list for such new county for the period as aforesaid.

History: En. Sec. 2, Ch. 129, L. 1919;
re-en. Sec. 4423, R. C. M. 1921.

16-624. (4424) Time within which jury-list to be made and certified by clerks of old county. Such new list shall be made and certified by such clerk or clerks of the existing county or counties as soon after the creation of such new county as may be practicable, and in any event within five days after request therefor shall be made by the clerk of the district court of the new county.

History: En. Sec. 3, Ch. 129, L. 1919;
re-en. Sec. 4424, R. C. M. 1921.

16-625. (4425) Removal of names from jury-box of old county. The clerk or clerks of the district court of the county or counties from which such new county has been or may hereafter be created shall, after the creation of such new county, remove from the list of jurors and jury-boxes of his or their county or counties the names of all persons upon the list which may have been filed with him or them by the jury commission who may appear to him or them to be residents of the new county and so certified by him as aforesaid.

History: En. Sec. 4, Ch. 129, L. 1919;
re-en. Sec. 4425, R. C. M. 1921.

Collateral References
Jury[Ⓒ]64.
50 C.J.S. Juries § 162.

16-626. (4426) Duty of clerk of court in new county regarding jury-lists. The clerk of court of the new county shall then file and prepare his

jury-list and boxes in accordance with the general law pertaining to the duties of clerks of court with relation to jury-lists and boxes.

History: En. Sec. 5, Ch. 129, L. 1919;
re-en. Sec. 4426, R. C. M. 1921.

Collateral References
Jury \Rightarrow 62(1).
50 C.J.S. Juries § 158.

CHAPTER 7

CHANGE OF NAME OF COUNTIES

- Section 16-701. Name of any county may be changed, how.
16-702. Petitions for change of name to be determined in district court.
16-703. Petition for change of name of county—by whom signed and what to specify.
16-704. Form of petition.
16-705. Comparison of signatures and certificate of county clerk—time during which petition may be retained.
16-706. Publication and posting of copies of petition.
16-707. Hearing of petition and objections thereto—proceedings.
16-708. Duty of clerk of court upon rendition of decree changing name of county.
16-709. Change in name in official records, forms, blanks, etc.
16-710. Records, writs, processes, actions, etc., to be the property and inure to benefit of county under new name.
16-711. Vested rights and existing laws not affected by change in name.
16-712. Assumption of indebtedness, bonds and contracts by county under new name.
16-713. Terms of court.
16-714. Retention of office by county, township and district officials—county boundaries.

16-701. (4427) Name of any county may be changed, how. The name, designation, appellation, cognomen, or title of any county in this state may be changed to any other name, designation, appellation, cognomen, or title, as in this act provided.

History: En. Sec. 1, Ch. 113, L. 1917;
re-en. Sec. 4427, R. C. M. 1921.

Collateral References
Counties \Rightarrow 3.
20 C.J.S. Counties § 5.

16-702. (4428) Petitions for change of name to be determined in district court. Petitions for change of names must be heard and determined by the district court of the county whose name is sought to be changed.

History: En. Sec. 2, Ch. 113, L. 1917;
re-en. Sec. 4428, R. C. M. 1921.

16-703. (4429) Petition for change of name of county—by whom signed and what to specify. A petition for the change of the name, designation, cognomen, appellation, or title of any county in this state must be signed by a number of the legal voters in such county equal, at least, to twenty-five per centum who are taxpayers and voters of the whole number of votes cast for the office of governor of Montana in such county, at the gubernatorial election next preceding the circulation of such petition. The signatures, in each instance, must be the genuine personal signature of the voter attaching his name to the petition. The petition must specify the present name of the county, the name proposed, and the reason or reasons for such

change of name, and must be entitled in and addressed to the appropriate district court aforesaid.

History: En. Sec. 3, Ch. 113, L. 1917;
re-en. Sec. 4429, R. C. M. 1921.

16-704. (4430) Form of petition. The following shall be substantially the form of petition for any change of name of a county as in this act provided:

In the district court of the.....judicial district of the state of Montana, in and for the county of.....

Petition for the change of the
Name of County.

To the honorable district court of the.....judicial district of the state of Montana, in and for the county of.....

We, the undersigned legal voters of the county of, state of Montana, respectfully petition the honorable district court aforesaid that the name of county, Montana, be changed to the name of county, Montana.

The reasons for the proposed change of name as aforesaid, are as follows: (Here set out reasons.)

We further petition this honorable court to appoint a time for the hearing of this petition, and of such objections thereto as may be filed before such date.

Each voter whose signature is hereby affixed hereby certifies that he has personally signed this petition, and that the residence, post-office address, and voting precinct of such signer are correctly written after his signature appearing hereon.

Name.	Residence.	P. O. Address.	Voting Precinct.
.....

Numbered lines for names.

Every such sheet for petitioner's signature shall be attached to a full and correct copy of the petition; and such petition may be filed with the clerk of the district court aforesaid, in sections for convenience in handling.

History: En. Sec. 4, Ch. 113, L. 1917;
re-en. Sec. 4430, R. C. M. 1921.

16-705. (4431) Comparison of signatures and certificate of county clerk—time during which petition may be retained. The county clerk of the county in which said petition shall be signed shall compare the signatures of the voters signing the same with their signatures on the registration books and blanks on file in his office for the preceding general election, and shall thereupon attach to the sheets of said petition containing such signatures his certificate to the district court aforesaid, substantially as follows:

State of Montana, }
County of } ss.

To the honorable district court of the judicial district of the state of Montana, in and for the county of.....

I, _____, county clerk of the county of _____, hereby certify that I have compared the signatures on (number of sheets) of the petition for change of name attached hereto, with the signatures of said voters as they appear on the registration books and blanks in my office; and I believe that the signatures of (names of signers) numbering (number of genuine signatures), are genuine. And I further certify that the number of genuine signatures hereto attached equals at least twenty-five per centum of the whole number of votes cast for the office of governor of Montana in said county at the gubernatorial election next preceding the circulation of this petition.

(Seal)

_____, County Clerk.

By _____

Deputy _____

The county clerk shall not retain in his possession any such petition, or any part thereof, for a longer period than two days for the first two hundred signatures thereon, and one additional day for each two hundred additional signatures or fraction thereof on the sheets presented to him, and at the expiration of such time he shall file the same with the clerk of the district court aforesaid, with his certificate attached thereto as above provided. The forms herein given are not mandatory, and, if substantially followed in any petition, it shall be sufficient disregarding clerical and merely technical errors.

History: En. Sec. 5, Ch. 113, L. 1917;
re-en. Sec. 4431, R. C. M. 1921.

16-706. (4432) Publication and posting of copies of petition. Upon the filing of the petition as aforesaid, the clerk of the district court, upon the receipt of the costs from any voter in the county, shall cause a copy of the same to be published for four successive weeks in some newspaper published in the county, and a copy of such petition must be posted at three of the most public places in the county for a like period by the said clerk of the district court, and proofs must be made of such publication and posting before the petition can be considered, and before a date for the hearing thereon may be fixed by the court.

History: En. Sec. 6, Ch. 113, L. 1917;
re-en. Sec. 4432, R. C. M. 1921.

16-707. (4433) Hearing of petition and objections thereto—proceedings. Such petition must be heard at such time as the court or judge may appoint, subject to the provisions of the preceding section, and objections may be filed in the office of the clerk of said court at any time before such date by any person who can, in such objections, show to the court or judge good reason against such change of name. On the hearing, the court or judge may examine on oath any of the petitioners, remonstrants, or other persons touching the petition, and may make an order changing the name if there appears any reason, benefit, or advantage for such change, or may dismiss the petition as to the court or judge may seem right or proper.

History: En. Sec. 7, Ch. 113, L. 1917;
re-en. Sec. 4433, R. C. M. 1921.

16-708. (4434) Duty of clerk of court upon rendition of decree changing name of county. Immediately upon the rendition of any decree changing

the name of a county as in this act provided, the clerk of the district court of said county shall transmit, by registered mail, a certified copy of said decree, showing the date of its rendition, to the secretary of state of the state of Montana, who shall file the same and record the same in an appropriate book.

History: En. Sec. 8, Ch. 113, L. 1917;
re-en. Sec. 4434, R. C. M. 1921.

16-709. (4435) Change in name in official records, forms, blanks, etc. From and after the rendition of the decree, the official records in the custody of the several county officers shall be styled and designated, as in each instance may be proper, with the new name of the county as provided by the decree; and all printed blanks, forms, and all printed matter whatsoever, and all written records of such county, shall be styled and designated with the new name; all the official records, blanks, forms, books and papers belonging to such county before the entry of such decree shall be styled and designated with the new name as in the decree provided; but for the convenience of searchers of public records, and in order to prevent confusion with respect to land titles, or in any other respect, it shall be proper to style, designate, or refer to such records, books, papers, blanks, and forms as were in existence before the rendition of such decree in the following manner:

New Name.	(Formerly)	Old Name County
-----		-----

History: En. Sec. 9, Ch. 113, L. 1917;
re-en. Sec. 4435, R. C. M. 1921.

16-710. (4436) Records, writs, processes, actions, etc., to be the property and inure to benefit of county under new name. All public records and property of the county existing under the former name shall be and become the public records and property of the county of the new name, and in all conveyances, indentures, instruments, decrees of courts, and other records, where the former name of the county occurs, said former name shall hereafter be construed to mean the new name of the county. All writs and processes in force and existence under the former name of the county shall thereafter be the writs and processes of and appertaining to the county under its new name; and all bonds, undertakings, and sureties alive and in existence, and running to or standing in the former name of the county, shall have the same force, effect, and relation to the county under its new name as they had to the county under its former name. All suits, actions, and proceedings in law or equity pending in the district court of the county under its former name, or in any of the other courts of said county, shall continue in full force and be in existence in the said court in which they were pending, under the new name of the county; and shall not be in anywise abated or affected by the change of name.

History: En. Sec. 10, Ch. 113, L. 1917;
re-en. Sec. 4436, R. C. M. 1921.

16-711. (4437) Vested rights and existing laws not affected by change in name. The change of name herein provided for shall not impair or work a forfeiture or alteration of any vested rights, and all laws of a general or

special nature applicable to the county under its former name shall thereafter apply with equal force and effect to the county under its new name.

History: En. Sec. 11, Ch. 113, L. 1917;
re-en. Sec. 4437, R. C. M. 1921.

16-712. (4438) Assumption of indebtedness, bonds and contracts by county under new name. All indebtedness and obligations of the county, whether bonded or otherwise, shall be assumed by and become the indebtedness of the county under its new name, and shall be the indebtedness and obligations of such county as theretofore; and all bonds theretofore issued by the county under its former name outstanding and unpaid at the time of the rendition of the decree shall be assumed by and become due from and paid by said county under its new name. All contracts and obligations, express or implied, unfulfilled by the county at the date of the rendition of the decree, shall be assumed and discharged by such county under its new name.

History: En. Sec. 12, Ch. 113, L. 1917;
re-en. Sec. 4438, R. C. M. 1921.

Collateral References

14 Am. Jur. 192, Counties, § 13.

16-713. (4439) Terms of court. The terms of the district court in and for said county as theretofore established by the court or a judge thereof under the former name of the county shall become the terms of said court for the county under its new name, and shall be held as stated in and for said county under its former name.

History: En. Sec. 13, Ch. 113, L. 1917;
re-en. Sec. 4439, R. C. M. 1921.

16-714. (4440) Retention of office by county, township and district officials—county boundaries. Persons who are, at the date of the rendition of the decree, the county, township, and district officers or officials, and members of the legislative assembly of the county under its former name, shall remain in office and shall thereafter be the county, township, district, and legislative officials of the county under its new name, and as such shall be entitled to the same salaries or compensation during the remainder of their terms of office that they were entitled to receive from the county under its former name. No change of name shall be so construed as to alter or modify the boundaries of the county as the same existed and were established under the former name of the county, but such boundaries shall be and remain the same until changed according to law.

History: En. Sec. 14, Ch. 113, L. 1917;
re-en. Sec. 4440, R. C. M. 1921.

CHAPTER 8

GENERAL POWERS AND LIMITATIONS UPON COUNTIES

- Section 16-801. Every county a body corporate.
16-802. Powers, how exercised.
16-803. Name and designation.
16-804. Enumeration of powers.
16-805. Restriction on loaning credit.
16-806. Restriction on temporary loans.
16-807. Limit of indebtedness.

- 16-808. Counties indebted beyond constitutional limit may operate on cash basis.
 16-809. Service of process.
 16-810. Inhabitants of county, competency as jurors when county party.
 16-811. No execution to issue.
 16-812. Money illegally paid recovered.

16-801. (4441) Every county a body corporate. Every county is a body politic and corporate, and as such has the power specified in this code, or in special statutes, and such powers as are necessarily implied from those expressed.

History: En. Sec. 4190, Pol. C. 1895; re-en. Sec. 2870, Rev. C. 1907; re-en. Sec. 4441, R. C. M. 1921. Cal. Pol. C. Sec. 4000.

Operation and Effect

A county is one of the civil divisions of the state for political and judicial purposes, created by the sovereign power of the state of its own will, without the consent of the people who inhabit it. It is quasi-corporate in character, but has only such powers as are expressly provided by law or are necessarily implied by those expressed. *State ex rel. Lambers v. Coad*, 23 M 131, 137, 57 P 1092; *Independent Publishing Co. v. County of Lewis and Clark*, 30 M 83, 86, 75 P 860; *Yellowstone Co. v. First Trust & Savings Bank*, 46 M 439, 450, 128 P 596; *Hersey v. Neilson*, 47 M 132, 143, 131 P 30; *Edwards v. County of Lewis and Clark*, 53 M 359, 365, 165 P 297; *Franzke v. Fergus County et al.*, 76 M 150, 245 P 962; *Lewis v. Petroleum County*, 92 M 563, 565, 17 P 2d 60.

While, in a strict sense, a county is not a municipal corporation, yet, in the sense that it is a body corporate with such powers only as are expressly conferred by the code and special statutes, and such as are necessarily implied from those expressed, it comes within the rules and principles applicable to such corporations. *State ex rel. Lambert v. Coad*, 23 M 131, 137, 57 P 1092; *Morse v. Granite County*, 44 M 78, 88, 119 P 286.

A county is a body corporate, but does not possess the powers of local legislation and control which are the distinguishing characteristics of a municipal corporation. *Hersey v. Neilson*, 47 M 132, 141, 131 P 30.

Id. A county does not have any powers other than those indicated in this section.

Aside from the powers granted to counties by statute and those necessarily implied from the powers expressed, they have none, and where there is a fair and reasonable doubt as to the existence of a particular power, it must be resolved against them and the power denied. *Sulli-*

van v. Big Horn County, 66 M 45, 47, 212 P 1105.

Id. A party assuming to deal with a county on the supposition that it possesses powers which it does not cannot maintain an action against it upon its unauthorized action.

Id. A municipal corporation, such as a county, being no more than a political subdivision of the state for governmental purposes, cannot be subject to a penal liability, and therefore an action for treble (or penal) damages for unlawful detainer does not lie.

Id. While an action for unlawful detainer in which treble damages are sought does not lie against a county, one in ejectment may be maintained against it.

"Prerogative" or its synonym "sovereignty" means the inherent power of the people; it must involve the general interest of the state at large, and though the prerogative of the state may be invoked for the protection of the rights of a county—its agent or creature—the county, in the absence of express authority granting it, does not itself possess the power of the sovereign. *Bignell et al. v. Cummins*, 69 M 294, 299, 222 P 797.

Where a party assumes to deal with a county on the supposition that it possesses powers which it does not in fact possess, he may not recover even though he has performed his part of the contract. *Lewis v. Petroleum County*, 92 M 563, 565, 17 P 2d 60.

References

Cited or applied as section 2870, Revised Codes, in *State ex rel. Furnish v. Mullen-dore*, 53 M 109, 117, 161 P 949; *State Bank of Outlook v. Sheridan County*, 72 M 1, 6, 230 P 1097; *State v. McGraw*, 74 M 152, 155, 240 P 812.

Collateral References

Counties—1.

20 C.J.S. Counties § 1.

14 Am. Jur. 186, Counties §§ 4, 5.

16-802. (4442) Powers, how exercised. Its powers can only be exercised by the board of county commissioners, or by agents, and officers acting under their authority, or authority of law.

History: En. Sec. 4191, Pol. C. 1895; re-en. Sec. 2871, Rev. C. 1907; re-en. Sec. 4442, R. C. M. 1921. Cal. Pol. C. Sec. 4001.

Operation and Effect

The powers of a county are exercised by the commissioners, but they are not

therefore authorized to bring actions in their official capacity on behalf of the county, in the absence of a provision conferring upon them the right to do so. State ex rel. Furnish v. Mullendore, 53 M 109, 117, 161 P 949.

16-803. (4443) Name and designation. The name of a county designated in the law creating it is its corporate name, and it must be known and designated thereby in all actions and proceedings touching its corporate rights, property, and duties; but this provision does not prevent county officers, when authorized by law, from suing in their name of office for the benefit of the county.

History: En. Sec. 4192, Pol. C. 1895; re-en. Sec. 2872, Rev. C. 1907; re-en. Sec. 4443, R. C. M. 1921. Cal. Pol. C. Sec. 4002.

Operation and Effect

A county by its corporate name is the proper party to bring "all actions and proceedings touching its corporate rights, property and duties"; hence, a mandamus proceeding to compel a board of county commissioners to reapportion an indebted-

ness between an old county and a new one should be brought in the name of the county; the board itself is not authorized to bring such a proceeding in its own name. State ex rel. Furnish v. Mullendore, 53 M 109, 117, 161 P 949.

Collateral References

Counties—217.
20 C.J.S. Counties § 328.

16-804. (4444) Enumeration of powers. It has power:

1. To sue and be sued.
2. To purchase and hold lands within its limits.
3. To make such contracts and purchase and hold such personal property as may be necessary to the exercise of its powers.
4. To make such orders for the disposition or use of its property as the interests of its inhabitants require.
5. To levy and collect such taxes for the purposes under its exclusive jurisdiction as are authorized by this code or by special statutes.

History: En. Sec. 1, p. 498, Bannack Stat.; re-en. Sec. 1, p. 433, Cod. Stat. 1871; re-en. Sec. 335, 5th Div. Rev. Stat. 1879; re-en. Sec. 744, 5th Div. Comp. Stat. 1887; amd. Sec. 4193, Pol. C. 1895; re-en. Sec. 2873, Rev. C. 1907; re-en. Sec. 4444, R. C. M. 1921. Cal. Pol. C. Sec. 4003.

Operation and Effect

A party assuming to deal with a county on the supposition that it possesses powers which it does not cannot maintain an action against it upon its unauthorized action. Sullivan v. Big Horn County, 66 M 45, 47, 212 P 1105.

Id. A municipal corporation, such as a county, being no more than a political subdivision of the state for governmental purposes, cannot be subjected to a penal liability, and therefore an action for treble (or penal) damages for unlawful detainer does not lie.

Id. While an action for unlawful detainer in which treble damages are sought does not lie against a county, one in ejectment may be maintained against it.

A county is merely a subdivision of the state for governmental purposes, and as such is subject to legislative regulation and control; the legislature may within the limitations prescribed by the constitution, circumscribe or extend the powers to be exercised by a county, and legislative authority to regulate or control the disposition of county property not having been limited by the constitution, it could properly declare, as it did by this section and section 16-1001, that such property may be sold only under the restrictions and in the manner therein indicated. Franzke v. Fergus County et al., 76 M 150, 156, 245 P 962.

The court is not precluded from holding a county liable for the torts of its employees on the theory that a "sovereign" cannot be sued without its consent, since this section provides that counties may "sue and be sued." Johnson v. City of Billings et al., 101 M 462, 472, 54 P 2d 579.

References

Cited or applied as section 4193, Polit-

ical Code, with other sections, in Greeley v. Cascade County, 22 M 580, 587, 57 P 274; Gregg v. Bayers, 73 M 165, 167, 235 P 337.

Collateral References

Counties \Rightarrow 103, 111(1), 190(1), 208.
20 C.J.S. Counties §§ 165, 173, 279, 319.

16-805. (4445) Restriction on loaning credit. No county must ever give or loan its credit in aid of, or make any donation or grant, by subsidy or otherwise, to any individual, association, or corporation, or become a subscriber to or a shareholder in any company or corporation, or a joint owner with any person, company or corporation.

History: En. Sec. 4194, Pol. C. 1895; re-en. Sec. 2874, Rev. C. 1907; re-en. Sec. 4445, R. C. M. 1921. Cal. Pol. C. Sec. 4004.

16-806. (4446) Restriction on temporary loans. All moneys borrowed by or on behalf of any county must be used only for the purpose specified in the law authorizing the loan.

History: En. Sec. 4195, Pol. C. 1895; re-en. Sec. 2875, Rev. C. 1907; re-en. Sec. 4446, R. C. M. 1921. Cal. Pol. C. Sec. 4005.

16-807. (4447) Limit of indebtedness. No county must become indebted in any manner or for any purpose to an amount, including existing indebtedness, in the aggregate exceeding five per centum of the value of the taxable property therein, to be ascertained by the last assessment for state and county taxes previous to the incurring of such indebtedness, and all bonds or obligations in excess of such amount given by or on behalf of such county are void. No county must incur any indebtedness or liability for any single purpose to an amount exceeding ten thousand dollars without the approval of a majority of the electors thereof voting at an election to be provided by law.

History: En. Sec. 4196, Pol. C. 1895; re-en. Sec. 2876, Rev. C. 1907; re-en. Sec. 4447, R. C. M. 1921.

NOTE.—See also section 5 of article XIII of the state Constitution.

Operation and Effect

The issuance by a county of coupon bonds to the extent of one hundred and fifty thousand dollars for the purpose of redeeming outstanding county warrants to that amount is merely a change in the form of a subsisting liability, and not the creation of a new indebtedness or liability, and is, therefore, not within the inhibition of the constitution and laws of the state which provide in effect that coun-

ties shall not incur an indebtedness or liability for any single purpose in an amount exceeding ten thousand dollars without the approval of a majority of the electors of the county. Hotchkiss v. Marion, 12 M 218, 223, 224, 29 P 821. See Edwards v. County of Lewis and Clark, 53 M 359, 165 P 297.

References

Bennett v. Petroleum County et al., 87 M 436, 444, 288 P 1018.

Collateral References

Counties \Rightarrow 150(1).
20 C.J.S. Counties § 223.
14 Am. Jur. 226, Counties, § 64.

16-808. (4447.1) Counties indebted beyond constitutional limit may operate on cash basis. That in case the total indebtedness of a county, lawful when incurred, by reason of great diminution of taxable value exceeds the limit of five per centum (5%) provided in section 5 of article 13 of the constitution of the state of Montana, it shall be lawful for said county and it is hereby authorized and empowered to thereafter manage and conduct its business affairs on a cash basis and pay the reasonable and necessary current expenses of said county out of the cash in the county treasury and

derived from its current revenue, and under such restrictions and regulations as may be imposed by the board of county commissioners of said county by a resolution duly adopted and spread upon the minutes of said board; provided, however, that nothing herein shall restrict the right of said board to make the necessary tax levies for interest and sinking fund purposes, and provided further that nothing herein shall affect the right of any creditor of said county to pursue any remedy now given him by law to obtain payment of his claim.

History: En. Sec. 1, Ch. 93, L. 1935.

16-809. (4448) Service of process. In all legal proceedings against the county, process must be served on the chairman of the board of county commissioners; and whenever an action or proceeding is commenced, it is the duty of the chairman forthwith to notify the county attorney thereof, and to lay before the board of county commissioners, at its next meeting, all the information he may have in regard to such action or proceeding.

History: En. Sec. 4197, Pol. C. 1895; re-en. Sec. 2877, Rev. C. 1907; re-en. Sec. 4448, R. C. M. 1921.

Collateral References

Counties⇒219.

20 C.J.S. Counties § 329.

16-810. (4449) Inhabitants of county, competency as jurors when county party. On the trial on an action in which the county is interested, the inhabitants of such county are competent jurors, if otherwise competent and qualified according to law.

History: En. Sec. 341, 5th Div. Rev. Stat. 1879; re-en. Sec. 750, 5th Div. Comp. Stat. 1887; amd. Sec. 4198, Pol. C. 1895; re-en. Sec. 2878, Rev. C. 1907; re-en. Sec. 4449, R. C. M. 1921.

Collateral References

Jury⇒89.

50 C.J.S. Juries § 216.

16-811. (4450) No execution to issue. When a judgment is rendered against the county, or against any county officer, in an action prosecuted against him in his name of office, when the same is to be paid by the county, no execution must issue upon the judgment, but the same must be paid as other county charges; and when so collected, must be paid by the county treasurer to the proper person to whom the same is adjudged, upon the delivery of a proper voucher therefor.

History: En. Sec. 342, 5th Div. Rev. Stat. 1879; re-en. Sec. 751, 5th Div. Comp. Stat. 1887; amd. Sec. 4199, Pol. C. 1895; re-en. Sec. 2879, Rev. C. 1907; re-en. Sec. 4450, R. C. M. 1921.

Greeley v. Cascade County, 22 M 580, 587, 57 P 274.

Collateral References

Counties⇒226.

20 C.J.S. Counties § 336.

References

Cited as section 4199, Political Code, in

16-812. (4451) Money illegally paid recovered. Whenever any board of county commissioners, without authority of law, orders any money paid as a salary, fees, or for other purposes, and such money has been actually paid, or whenever the county clerk has drawn any warrant or warrants in his own favor, or in favor of any other person, without being authorized thereto by the board of county commissioners, or by the law, and the same has been paid, the county attorney of such county must institute an action in the name of the county against such person or persons to recover the money so paid, and twenty per cent damage for the use thereof, and no

order of the board of county commissioners therefor is necessary in order to maintain such action; when the money has not been paid on such orders, it is the duty of the county attorney to commence an action in the name of the county for restraining the payment of the same; and no order of the board of county commissioners therefor is necessary to maintain such action.

History: En. Sec. 4200, Pol. C. 1895; re-en. Sec. 2880, Rev. C. 1907; re-en. Sec. 4451, R. C. M. 1921.

Related sections: 16-1161, 16-3103.

Collateral References

Counties⇒210.

20 C.J.S. Counties § 320.

CHAPTER 9

COUNTY COMMISSIONERS—ORGANIZATION—MEETINGS—COMPENSATION

- Section** 16-901. Board, how composed.
 16-902. Member must be elector of county.
 16-903. Vacancy, how filled.
 16-904. Bond of county commissioners.
 16-905. Chairman of board—administration of oaths.
 16-906. Meetings and records to be public.
 16-907. Clerk.
 16-908. Duties of clerk.
 16-909. Duties of board.
 16-910. Regular meetings—extra sessions.
 16-911. Other meetings.
 16-912. Compensation of members of board.

16-901. (4452) Board, how composed. Each county must have a board of county commissioners, consisting of three members, whose term of office is six years.

History: En. Sec. 4210, Pol. C. 1895; re-en. Sec. 2881, Rev. C. 1907; re-en. Sec. 4452, R. C. M. 1921; amd. Sec. 1, Ch. 118, L. 1933. Cal. Pol. C. Sec. 4022.

References

Cited as section 4210, Political Code, in *Williams v. Commrs. of Broadwater Co.*, 28 M 360, 364, 72 P 755.

Collateral References

Counties⇒38.

20 C.J.S. Counties § 74.

14 Am. Jur. 199, Counties, §§ 26 et seq.

Power to extend boundaries of municipal corporations. 64 ALR 1335.

16-902. (4453) Member must be elector of county. Each member of a board of county commissioners must be an elector of the county he represents.

History: En. Sec. 4211, Pol. C. 1895; re-en. Sec. 2882, Rev. C. 1907; re-en. Sec. 4453, R. C. M. 1921. Cal. Pol. C. Sec. 4023.

Collateral References

Counties⇒42.

20 C.J.S. Counties § 76.

16-903. (4454) Vacancy, how filled. Whenever a vacancy occurs in the board of county commissioners from a failure to elect or otherwise, the district judge or judges in whose district the vacancy occurs must fill the vacancy, and such appointee shall hold office until the next general election.

History: En. Sec. 4212, Pol. C. 1895; re-en. Sec. 2883, Rev. C. 1907; amd. Sec. 1, Ch. 5, L. 1913; amd. Sec. 1, Ch. 28, L. 1921; re-en. Sec. 4454, R. C. M. 1921. Cal. Pol. C. Sec. 4026.

Operation and Effect

The power to fill a vacancy in the of-

fice of county commissioner is conferred by the constitution upon the district judge of the district in which the vacancy occurs and the provisions of this section, enacted in pursuance thereof, but such power is ministerial, not judicial, in character. Certiorari does not lie to annul an order filling a vacancy deemed by

the judge to exist in that office in a newly created county because of the alleged unconstitutionality of the act under which the office was filled by election, and because the incumbent was holding two other offices regarded by him as incompatible. *State ex rel. Downen v. District Court*, 50 M 249, 251, 252, 146 P 467.

Held, under section 59-602, that refusal or neglect of an officer-elect to file his bond within the time prescribed creates a vacancy in the office, and that in the case of a county commissioner the district judge had authority, under this section upon the expiration of the thirty-day period provided for the filing of a bond, to declare the office vacant and make a prospective appointment to fill

the vacancy when it did occur, to-wit, at the commencement of the new term. *State ex rel. Wallace v. Callow*, 78 M 308, 326, 254 P 187.

References

Cited or applied as section 2883, Revised Codes, before amendment, and construed as to constitutionality, in *State ex rel. McGowan v. Sedgwick*, 46 M 187, 193, 127 P 94; as section 1, chapter 5, Laws of 1913, and construed as to constitutionality, in *State ex rel. Rowe v. Kehoe*, 49 M 582, 586, 144 P 162.

Collateral References

Counties[Ⓒ]43.
20 C.J.S. Counties § 77.

16-904. (4455) Bond of county commissioners. Each person elected or appointed to the office of county commissioner must, before he enters upon the duties of his office, execute and file with the clerk of the district court of the county a bond, as provided in section 6-201.

History: Ap. p. Sec. 917, 5th Div. Comp. Stat. 1887; amd. Sec. 4213, Pol. C. 1895; re-en. Sec. 2884, Rev. C. 1907; re-en. Sec. 4455, R. C. M. 1921; amd. Sec. 1, Ch. 30, L. 1947.

Operation and Effect

Held, that this section requiring, inter alia, the furnishing of an official bond by county commissioners before assuming office, and imposing upon the district judge the duty of examining such bond on the first day of each term of court, is not open to the construction that county commissioners may file their bonds regardless of

approval, and that the judge at the next session of court must approve them if sufficient, such a construction being inconsistent with the provisions of sections 6-201 to 6-307, having to do generally with the giving of official bonds or qualifying for county office. *State ex rel. Wallace v. Callow*, 78 M 308, 324 et seq., 254 P 187.

Collateral References

Necessity and sufficiency of efforts to induce public officers to bring suit as condition of taxpayer's right to bring suit. 124 ALR 585.

16-905. (4456) Chairman of board — administration of oaths. The board of county commissioners must elect one of its members chairman. The chairman must preside at all meetings of the board, and in case of his absence or inability to act, the members present must, by an order, select one of their number to act as chairman temporarily. Any member of the board may administer oaths to any persons concerning any matter submitted to them or connected with their powers or duties.

History: En. Sec. 4214, Pol. C. 1895; re-en. Sec. 2885, Rev. C. 1907; re-en. Sec. 4456, R. C. M. 1921. Cal. Pol. C. Sec. 4028.

Collateral References

Counties[Ⓒ]51.
20 C.J.S. Counties § 80.
14 Am. Jur. 204, Counties, § 32.

16-906. (4458) Meetings and records to be public. All meetings of the board must be public, and the books, records, and accounts must be kept at the office of the clerk, open at all times for public inspection, free of charge.

History: En. Sec. 4216, Pol. C. 1895; re-en. Sec. 2887, Rev. C. 1907; re-en. Sec. 4458, R. C. M. 1921. Cal. Pol. C. Sec. 4035.

References

Cited as section 4216, Political Code, in *Williams v. Commrs. of Broadwater Co.*,

28 M 360, 364, 365, 72 P 755; *Burr v. Winnett Times Publishing Co. et al.*, 80 M 70, 79 et seq., 258 P 242.

Collateral References

Counties[Ⓒ]52.
20 C.J.S. Counties § 88.

16-907. (4459) **Clerk.** The county clerk is the clerk of the board of county commissioners. The records must be signed by the chairman and the clerk.

History: En. Sec. 4217, Pol. C. 1895; re-en. Sec. 2888, Rev. C. 1907; re-en. Sec. 4459, R. C. M. 1921. Cal. Pol. C. Sec. 4029.

Collateral References
Counties \hookrightarrow 89.
20 C.J.S. Counties § 141.

16-908. (4460) **Duties of clerk.** The clerk of the board must:

1. Record all the proceedings of the board.
2. Make full entries of all its resolutions and decisions on all questions concerning the raising of money for, and the allowance of accounts against the county.
3. Record the vote of each member on any question upon which there is a division, or at the request of any member present.
4. Sign all orders made and warrants issued by order of the board for the payment of money, and certify the same to the county treasurer.
5. Record the reports of the county treasurer of the receipts and disbursements of the county.
6. Preserve and file all accounts acted upon by the board.
7. Preserve and file all petitions and applications for franchises, and record the action of the board thereon.
8. Record all orders levying taxes.
9. Designate upon every account allowed by the board the amount allowed, and he must deliver to any person who may demand it a certified copy of any record in his office, or any account on file therein.
10. As often as a new township is organized, or the boundaries of any township are altered, to immediately make out and transmit to the secretary of state a certified statement of the names and boundaries, and the boundaries of any township altered.
11. Perform all other duties required by law or any rule or order of the board.

History: En. Secs. 32, 33, 35, p. 505, Bannack Stat.; re-en. Secs. 32, 33, 35, p. 439, Cod. Stat. 1871; re-en. Secs. 366, 367, 368, 5th Div. Rev. Stat. 1879; re-en. Secs. 770, 771, 773, 5th Div. Comp. Stat. 1887; amd. Sec. 4218, Pol. C. 1895; re-en. Sec. 2889, Rev. C. 1907; re-en. Sec. 4460, R. C. M. 1921. Cal. Pol. C. Sec. 4030.

May Not Question Constitutionality of Statute

A ministerial officer, such as a county clerk, to whom no injury can result and to whom no violation of duty can be imputed by reason of his compliance with a statute cannot refuse to perform a duty imposed by it on the ground of its unconstitutionality, since such an officer is not liable for his official acts when acting

under process, warrants or other instruments, fair upon their face and issued from a superior tribunal or board. State ex rel. Lockwood v. Tyler, 64 M 125, 131, 208 P 1081.

Right to Question Legality of Claims Against County

The duty of the county clerk to issue warrants for claims passed upon by the board of county commissioners, being ministerial only, he is not clothed with supervisory power to either question or determine the legality of the claims, except where they are void upon their face as without the jurisdiction of the board to pass upon. State ex rel. Lockwood v. Tyler, 64 M 125, 131, 208 P 1081.

16-909. (4461) **Duties of board.** The board of county commissioners must cause to be kept:

1. A "Minute Book," in which must be recorded all orders and decisions made by them, and the daily proceedings had at all regular and special meetings.

2. A "Road Book," containing all proceedings and adjudications relating to the establishment, maintenance, change, and discontinuance of roads and road districts, or relating to road supervisors and their reports and accounts, as provided in section 2604 (Pol. Code 1895, since repealed) of this code.

3. A "Franchise Book," containing all franchises granted by them, for what purpose, the length of time, and to whom granted, the amount of bond and license tax required.

4. A "Warrant Book," in which must be entered, in the order of drawing, all warrants drawn on the treasury, with their number and reference to the order on the minute book, with the date, amount, on what account, and name of payee.

History: En. Sec. 4219, Pol. C. 1895; re-en. Sec. 2890, Rev. C. 1907; re-en. Sec. 4461, R. C. M. 1921. Cal. Pol. C. Sec. 4031.

Operation and Effect

This section providing that a board of county commissioners must cause a minute-book to be kept in which must be recorded all its orders, decisions, and proceedings, does not make such record the only evidence admissible to prove the action of the board nor prohibit oral testimony as to what was actually done, and,

when so proved, its action has the same effect as though shown by a minute entry. State ex rel. Rankin v. Madison State Bk., 77 M 498, 503, 251 P 548.

References

Cited or applied as section 2890, Revised Codes, in Smith v. Zimmer, 45 M 282, 300, 125 P 420; State v. American Bank & Trust Co., 75 M 369, 375, 243 P 1093.

Collateral References

Counties—53.
20 C.J.S. Counties § 91.

16-910. (4462) Regular meetings—extra sessions. The board of county commissioners, except as may otherwise be required of them, may meet at the county seat of their respective counties on the first Monday of each and every month of the year, for the purpose of allowing bills and attending to any other business that may regularly come before them, and may sit not exceeding three days at each session, except the December session, at which time they may sit not exceeding eight days. But the board may at any time, by giving at least two days' posted public notice, hold an extra session of not over two days' duration; provided, that the limitations as to the time of sessions of the board of county commissioners contained in this section shall not apply to counties of the first, second, third or fourth classes.

History: Ap. p. Sec. 380, 5th Div. Rev. Stat. 1879; amd. Sec. 785, 5th Div. Comp. Stat. 1887; amd. Sec. 4220, Pol. C. 1895; re-en. Sec. 2891, Rev. C. 1907; amd. Sec. 1, Ch. 148, L. 1915; re-en. Sec. 4462, R. C. M. 1921; amd. Sec. 1, Ch. 35, L. 1929. Cal. Pol. C. Sec. 4032.

References

Cited or applied as section 2891, Revised Codes, before amendment, in Smith v. Zimmer, 45 M 282, 307, 125 P 420.

16-911. (4463) Other meetings. Such other meetings must be held to canvass election returns, equalize taxation, and other purposes as are prescribed in this code or provided by the board.

History: En. Sec. 4221, Pol. C. 1895; re-en. Sec. 2892, Rev. C. 1907; re-en. Sec. 4463, R. C. M. 1921. Cal. Pol. C. Sec. 4033.

16-912. (4464) Compensation of members of board. Each member of the board of county commissioners is entitled to twelve dollars (\$12.00) per

day for each day's attendance on the sessions of the board, and seven cents (7c) per mile for the distance necessarily traveled in going to and returning from the county seat and his place of residence each day that such trip is actually made, and while engaged in the performance of his official duties, and no other compensation must be allowed.

History: En. Sec. 347, 5th Div. Rev. Stat. 1879; amd. Sec. 755, 5th Div. Comp. Stat. 1887; amd. Sec. 4222, Pol. C. 1895; re-en. Sec. 2893, Rev. C. 1907; re-en. Sec. 4464, R. C. M. 1921; amd. Sec. 1, Ch. 176, L. 1939; amd. Sec. 1, Ch. 4, L. 1949; amd. Sec. 1, Ch. 100, L. 1951; amd. Sec. 1, Ch. 82, L. 1955.

NOTE.—For compensation of county commissioners when inspecting construction work, see sec. 32-314.

NOTE.—See sec. 59-801, last amended in 1951.

Public Welfare Act Adopted General Statute

Chapter 82, Part I, Sec. XI, subd. b, Laws 1937 (71-214) of the public welfare act simply adopted the provisions of this statute, and makes them applicable to the

board of county public welfare, providing as it does that the county welfare board shall receive the same compensation for their services when acting as the county welfare board as they receive when acting as the board of county commissioners, which is payable by the county. State ex rel. Broadwater County v. Potter, 107 M 284, 288, 84 P 2d 796.

References

Cited or applied as section 2893, Revised Codes, in State ex rel. Payne v. District Court, 53 M 350, 354, 165 P 294; State v. Story, 53 M 573, 165 P 748.

Collateral References

Counties  46.

20 C.J.S. Counties § 79.

CHAPTER 10

GENERAL POWERS AND DUTIES OF COUNTY COMMISSIONERS

- Section 16-1001. Powers of supervision.
 16-1002. Division of county into townships, school, road and other districts—parking regulations.
 16-1003. Elections, powers concerning.
 16-1004. Highways, ferries and bridges.
 16-1005. Cities may use county road equipment—when.
 16-1006. Rooms for county purposes.
 16-1007. Obtaining property.
 16-1008. Erection of county buildings.
 16-1008A. Erection and management of county buildings and other improvements.
 16-1009. Sale of property.
 16-1010. Validation of certain sales of property by county commissioners.
 16-1011. Validation of sales of property by county.
 16-1012. Validation of sales of property heretofore made by counties.
 16-1013. Examination and allowance of officers' accounts.
 16-1014. Accounts to be examined, settled and allowed.
 16-1015. Taxation.
 16-1016. Equalizing assessments.
 16-1017. Direction of law suits.
 16-1018. Insurance of county buildings.
 16-1019. Licenses.
 16-1020. Fixing of compensation of officers not otherwise provided for.
 16-1021. Filling vacancies in county, township and precinct offices.
 16-1022. Contract for printing and supplies.
 16-1023. Publication of proceedings, list of claims, financial statement.
 16-1024. Representing and management of county property and business.
 16-1025. Rules and enforcement.
 16-1026. Seal of county.
 16-1027. Necessary acts.
 16-1028. Borrowing money.
 16-1029. Bonds for construction may be issued.
 16-1030. Lease of county property.

- 16-1031. Garbage and ash collection—tax.
- 16-1032. Lease of county property for hospital purposes.
- 16-1033. Validation of county sales of real property.
- 16-1034. County membership in organizations authorized.
- 16-1035. Validation of county conveyances heretofore made.

16-1001. (4465) Powers of supervision. The board of county commissioners has jurisdiction and power under such limitations and restrictions as are prescribed by law:

To supervise the official conduct of all county officers, and officers of all districts and other subdivisions of the county, charged with assessing, collecting, safe keeping, management or disbursement of the public revenues; see that they faithfully perform their duties, direct prosecutions for delinquencies, and when necessary require them to renew their official bonds; to make reports and to present their books and accounts for inspection.

History: Secs. 4465-4465.29, R. C. M. 1935 en. as Sec. 4230, Pol. C. 1895; re-en. Sec. 2894, Rev. C. 1907; amd. Sec. 1, Ch. 15, L. 1919; Subd. 5 amd. Sec. 1, Ch. 84, L. 1919; amd. Sec. 1, Ch. 94, L. 1919; re-en. Sec. 4465, R. C. M. 1921; amd. Sec. 1, Ch. 95, L. 1923; amd. Sec. 1, Ch. 54, L. 1927; amd. Sec. 1, Ch. 38, L. 1929; Subd. 28 amd. Sec. 1, Ch. 142, L. 1929; amd. Sec. 1, Ch. 100, L. 1931. Cal. Pol. C. Sec. 4046.

NOTE.—Section 4465 as it existed in the 1921 code contained all the powers of the county commissioners and had 30 subdivisions. For convenience' sake, these have been divided, and will be found in sections 16-1001 to 16-1032.

Cross-References

Establishment of airports, sec. 1-801 et seq.

Libraries, secs. 44-201 to 44-217.

Records, destruction, sec. 59-514.

Smoke nuisance, abatement, secs. 11-2501 to 11-2511.

Supervise Officers

However, the board of county commissioners has general supervision and control over the officers, affairs, and finances of its county and it may be conceded that, unless authority therefor shall be found in the statutes, no other county officer may bind the county by contract, and that a person dealing with a county through one of its agents is bound to know the extent of such agent's authority, and if he enters into an unauthorized contract, he does so at his own risk. (Pue v. Lewis and Clark County, 75 M 207, 243 P 573.) Hicks v. Stillwater County, 84 M 38, 42, 274 P 296.

NOTE.—Sections 16-1001 to 16-1032 were all listed as section 4465 in the Revised Codes of 1921, making in all 30 subdivisions to that section. The following annotations were made dealing with all the powers of county commissioners. These

annotations were made with no reference to any particular subdivision of section 4465 of the 1921 code. They are placed here for convenience, but should be considered in connection with the next 29 sections, also.

General Provisions

A board of county commissioners, is one of limited powers, and must in every instance justify its action by reference to the provisions of law defining and limiting these powers. If, however, there is no question of the existence of the power to do the act proposed, and the mode of its exercise is not pointed out, the board is left free to use its own discretion in selecting the mode it shall adopt or the course it shall pursue, and the result cannot be called in question if the course pursued is reasonably well adapted to the accomplishment of the end proposed. State ex rel. Lambert v. Coad, 23-M 131, 137, 57 P 1092; State ex rel. Gillett v. Cronin, 41 M 293, 295, 109 P 144; Morse v. Granite County, 44 M 78, 89, 119 P 286; Hersey v. Neilson, 47 M 132, 145, 131 P 30.

A contract with an attorney for his services, entered into by the chairman of the board individually, is not binding on the county, since the commissioners have power to bind the county only where they act as a legal entity. Williams v. Commrs. of Broadwater Co., 28 M 360, 365, 366, 72 P 755.

A contract made by a board of county commissioners, a few weeks before the expiration of its term of office, and upon the expiration of a prior contract, for county printing for the two succeeding years, is valid in the absence of fraud or bad faith in the making, and is not against public policy. Picket Pub. Co. v. Board of County Commrs., 36 M 188, 194, 195, 92 P 524.

While the board of county commissioners has the power under this section to change the boundaries of a county, or to abolish a township altogether, a due regard for other provisions of the code requires that its authority in this respect be limited to the extent that there must always be at least two townships in each county, and in abolishing all but one township in a county it acts in excess of its jurisdiction. *State ex rel. Gillett v. Cronin*, 41 M 293, 296, 109 P 144.

Counties and school districts are subdivisions of the state government with fixed powers and duties, and any act taken by the commissioners of the former or the trustees of the latter must be justified by the provisions of the statutes defining and limiting their powers. *State v. McGraw*, 74 M 153, 155, 240 P 812.

Where the legislature has prescribed with particularity the essential steps necessary to be taken by a county in the exercise of a power granted, the statute must be held to exclude any other mode of procedure, under the doctrine *expressio unius est exclusio alterius*. *Franzke v. Fergus County et al.*, 76 M 150, 153, 245 P 962.

The duty imposed upon the commissioners by this section is mandatory and imperative, and a failure to discharge it may be serious to them. *Moore v. Industrial Accident Fund*, 80 M 136, 139, 259 P 825.

The board of county commissioners may exercise powers not specifically granted if they are necessarily implied from those granted, and under its implied power it may contract to have work done which is necessary for the proper management of the county's business and the preservation of its property, if the law does not make it the duty of some county officer to do the work. *Arnold et al. v. Custer County et al.*, 83 M 130, 149, 269 P 396.

Id. Where by law the board of county commissioners or other county officer is required to do an act but the method of doing it is not provided, any reasonable and suitable means may be adopted for performing it.

While the board of county commissioners is without power to enter into a contract for services the performance of which is cast upon another county official or board, it may contract with a private individual for information relative to matters of taxation to aid it in the performance of its duties as a county board of equalization, even though, incidentally, the information received may aid other officials in the performance of their duties, provided the grant of power is to be found

in the statutes. *Simpson v. Silver Bow County*, 87 M 83, 93, 285 P 195.

Id. Where the board of county commissioners has a given power, granted expressly or impliedly, but no mode of exercise thereof is indicated, it may in its discretion select any appropriate mode or course of procedure.

Implied Powers—Installing Tract Index

In view of the provisions of sections 84-4151, 84-4152 and 84-4156, and the powers conferred upon the commissioners by sections 16-1001 to 16-1032, and under the rule that any appropriate means of carrying out a statutory power conferred on a public officer or board without prescribing the mode of its exercise may be adopted, the commissioners under their implied power, may authorize installation and maintenance of a tract index in the clerk's office for information on tax sales and application for tax deeds. *Ransom v. Pingel*, 104 M 119, 122, 65 P 2d 616.

References

Cited or applied as section 2894, Revised Codes, before amendment, in *State ex rel. Stuewe v. Hindson*, 44 M 429, 439, 120 P 485; *Reid v. Lincoln County*, 46 M 31, 64, 125 P 429; *State ex rel. Hillis v. Sullivan*, 48 M 320, 324, 137 P 392; *State v. Story*, 53 M 573, 581, 165 P 748; *State v. Poland et al.*, 61 M 600, 603, 203 P 352; *State v. Gowdy*, 62 M 119, 203 P 1115; *State v. District Court et al.*, 62 M 275, 278, 204 P 600; *State ex rel. Case v. Bolles et al.*, 74 M 54, 65, 238 P 586; *Riggs v. Webb*, 77 M 80, 82, 249 P 1041; *State ex rel. McMaster v. District Court*, 80 M 228, 232, 260 P 134; *State ex rel. Blair v. Kuhr*, 86 M 377, 381, 283 P 758; *Brannin v. Sweet Grass Co.*, 88 M 412, 418, 293 P 970; *State et al. v. Board of Commissioners et al.*, 89 M 37, 296 P 1; *Judith Basin Co. v. Livingston et al.*, 89 M 438, 442 et seq., 298 P 356.

Collateral References

Counties—47.
20 C.J.S. *Counties* § 81.
14 Am. Jur., *Counties*, p. 200, §§ 28 et seq.; p. 222, §§ 61 et seq.
Authority of county to employ tax ferret. 11 ALR 913.
Power of board to appoint officer or make contract extending beyond its own terms. 70 ALR 794.
Power of county supervisors to remit, release or compromise taxes. 99 ALR 1066.
Power of county or its officials as to compromise of claims. 105 ALR 170.

16-1002. (4465.1) Division of county into townships, school, road and other districts—parking regulations. The board of county commissioners

has jurisdiction and power under such limitations and restrictions as are prescribed by law:

To divide the counties into township, school, road and other districts required by law, change the same, and create others as convenience requires, by consolidation of two (2) or more townships, or otherwise.

To establish by resolution parking regulations, for the purpose of regulating the parking of motor vehicles in unincorporated towns and villages.

History: En. Subd. 2, Sec. 1, Ch. 100, L. 1931; amd. Sec. 1, Ch. 72, L. 1951. See history of Sec. 16-1001.

Collateral References

14 Am. Jur. 199, Counties, §§ 26 et seq.

Power to extend boundaries of municipal corporations. 64 ALR 1335.

Construction and effect in civil actions of statute, ordinance, or regulation requiring vehicles to be stopped or parked parallel with, and within certain distances of, curb. 17 ALR 2d 582.

16-1003. (4465.2) Elections, powers concerning. The board of county commissioners has jurisdiction and power under such limitations and restrictions as are prescribed by law:

To establish, abolish and change election precincts, and to appoint judges of election, canvass all election returns, declare the result, and issue certificates thereof.

History: En. Subd. 3, Sec. 1, Ch. 100, L. 1931. See history of Sec. 16-1001.

Cross-Reference

Establishment of precincts, sec. 23-401.

Board Without Power to Pass on Eligibility

The county canvassing board may not pass upon the question whether a candidate voted for was or was not eligible to the office to which he aspired, such issues being properly triable in an election contest under provisions of section 23-926 et seq., or section 94-1459 et seq. State ex rel. Stone v. District Court, 103 M 515, 517, 63 P 2d 147.

Canvassers May Be Controlled by Writ of Mandate

A county canvassing board acts in a purely ministerial capacity in ascertaining and registering the effect of election returns, and is subject to control by writ of mandate. State ex rel. Lynch v. Batani, 103 M 353, 362, 62 P 2d 565.

Canvassers May Consider Only Matters on Face of Returns

A county board of canvassers in canvassing election returns may not consider any matter not appearing upon the face of the election returns; the tally sheets being the primary evidence of the count of the votes. State ex rel. Lynch v. Batani, 103 M 353, 360, 62 P 2d 565.

16-1004. (4465.3) Highways, ferries and bridges. The board of county commissioners has jurisdiction and power under such limitations and restrictions as are prescribed by law:

To lay out, maintain, control and manage public highways, ferries and bridges, within the county, and levy such tax therefor as required by law; provided, however, that they may in the exercise of a sound discretion, jointly with other counties, lay out, maintain, control, manage and improve public highways, ferries and bridges in adjacent counties, wholly or in such part as may be agreed upon between the boards of county commissioners of the counties concerned, and levy taxes therefor as provided by law; and where joint highway or bridge construction projects are contemplated or necessary and the cooperation of another county, or other counties, or the state or federal government, or either or both, is desired for the construction of such projects they may enter into agreement for adjusted annual contributions over not to exceed six years, toward the cost of such

projects, and they shall be authorized to place the same in their budget and levy taxes therefor as according to law.

History: En. Subd. 4, Sec. 1, Ch. 100, L. 1931. See history of Sec. 16-1001.

Collateral References

Operation of garage for maintenance and repair of municipal vehicles as governmental function. 26 ALR 2d 944.

16-1005. Cities may use county road equipment—when. The board of county commissioners of any county may, in their discretion, authorize and permit the use of any county highway or road machinery or equipment, when not in use in any rural district, in connection with the construction, repair and maintenance of streets, avenues and alleys within any incorporated city or town of four thousand population or less located in such county.

History: En. Sec. 1, Ch. 157, L. 1939.

Collateral References

Highways⊕110.
40 C.J.S. Highways § 203.

16-1006. (4465.6) Rooms for county purposes. The board of county commissioners has jurisdiction and power under such limitations and restrictions as are prescribed by law: When there are no necessary county buildings, to provide suitable rooms for county purposes.

History: En. Subd. 7, Sec. 1, Ch. 100, L. 1931. See history of Sec. 16-1001.

Failure to Provide Suitable Rooms

The office of county auditor is an important one with many duties and its proper fulfillment requires proper housing, help and equipment. The acts of the county commissioners in furnishing the auditor as an office, an eight by twenty-two foot partitioned space, with no windows, insufficient ventilation, and but artificial lighting was an abuse of discretion and an arbitrary act. State ex rel. Taylor v. Board of County Comms., — M —, 270 P 2d 994, 999. (Dissenting opinion, — M —, 270 P 2d 994, 999.)

Provide Suitable Rooms for County Purposes

Held, that the provision of this section,

16-1007. (4465.7) Obtaining property. The board of county commissioners has jurisdiction and power under such limitations and restrictions as are prescribed by law: To purchase, receive by donation, or lease any real or personal property necessary for the use of the county, preserve, take care of, manage and control the same; but no purchase of real property, exceeding the value of one hundred dollars (\$100.00), must be made unless the value of the same has been previously estimated by three (3) disinterested citizens of the county appointed by the district judge for that purpose, and no more than the appraised value must be paid therefor.

History: En. Subd. 8, Sec. 1, Ch. 100, L. 1931; amd. Sec. 1, Ch. 74, L. 1933. See history of Sec. 16-1001.

Power to Purchase Property

This section, relative to the manner of

granting power to the board of county commissioners to provide suitable rooms "when there are no necessary county buildings" refers to a present proprietorship of such buildings by a county and not to property temporarily held and used under lease for county purposes. Bennett v. Petroleum County et al., 87 M 436, 444 et seq., 288 P 1018.

Id. The matter of leasing privately owned property under power granted the board of county commissioners by this section, is one addressed to the sound judgment and discretion of the board.

Collateral References

Counties⊕104.
20 C.J.S. Counties § 166.

purchasing real estate, applies to a bridge. State ex rel. Donlan v. Board of Comms., 49 M 517, 523, 143 P 984.

This section refers to an outright purchase of property for county purposes, but it has no application to the acquisition of

a right of way under the general highway law. *Flynn v. Beaverhead County*, 54 M 309, 314, 170 P 13.

Collateral References

Counties \Rightarrow 103.

20 C.J.S. Counties § 165.

14 Am. Jur., Counties, p. 200, §§ 28 et seq.; p. 207, § 35.

16-1008. (4465.8) **Erection of county buildings.** The board of county commissioners has jurisdiction and power under such limitations and restrictions as are prescribed by law: To cause to be erected and furnished a courthouse, jail, hospital, and such other public buildings as may be necessary. A county hospital so erected and furnished, may be used for the hospitalization of the indigent sick of the county. Any county hospital which has heretofore, or which shall hereafter be, erected and furnished under the provisions of this act, and which has been or may be leased, as provided by section 16-1032, may also be used for the hospitalization of the nonindigent sick, providing, said nonindigent sick pay a reasonable fee for such hospitalization and providing there are no indigent sick needing hospitalization who would be deprived of said hospitalization by reason of the use of said hospital facilities by nonindigents. The board of county commissioners of any county of this state which now has, or may hereafter acquire, title to a site and building, or buildings, suitable for county hospital purposes, shall have jurisdiction and power under such limitations and restrictions as are prescribed by law to furnish and equip such building, or buildings, for hospital purposes in accordance with and as provided by the provisions of this act.

History: En. Subd. 9, Sec. 1, Ch. 100, L. 1931; amd. Sec. 1, Ch. 56, L. 1947. See history of Sec. 16-1001.

NOTE.—This section was amended a second time by the legislative session of 1947 (Ch. 238, Laws 1947). Attorney General's Opinion No. 122, Vol. 22 concludes that both amendments are to be given

effect. Hence both amendments of 1947 are included in this codification.

Cross-Reference

Parks, recreational areas, civic centers, museums and other like centers, power to procure, sec. 62-101.

16-1008A. (4465.8) **Erection and management of county buildings and other improvements.** The board of county commissioners has jurisdiction and power under such limitations and restrictions as are prescribed by law: To cause to be erected, furnished and maintained a courthouse, jail, hospital, civic center, youth center, park buildings, museums, recreation centers, and any combination thereof, and such other public buildings as may be necessary.

The board of county commissioners shall have the power in their discretion to create a commission for the management of such civic center, youth center, park buildings, museums, recreation centers, hospitals, or any combination of two or more thereof. Such commission shall be composed of the senior district court judge of the county, chairman of the board of county commissioners, the chairman of the school board for the district in which any of the above named buildings are situated, and the mayor of the city in such district, and five (5) lay members to be appointed by the senior district court judge, the chairman of the board of county commissioners, the chairman of the school board for the district in which any of the above named buildings are situated, and the mayor of the city in such district, and their terms of office shall be respectively one (1) for one (1), two (2)

for two (2), and two (2) for three (3) years, and on the expiration of such terms of one (1), two (2) and three (3) years, their successors shall hold for three (3) years each, and all of the above persons shall serve without compensation. In cases where a commission has been appointed, the commission together with the board of county commissioners shall have the power to employ a manager.

A county hospital so erected and furnished may be used for the hospitalization of the indigent sick of the county. Any county hospital which has heretofore been, or which may hereafter be, erected and furnished under the provisions of this act, and which has been, or may be, leased, as provided by section 16-1032, may also be used for the hospitalization of the non-indigent sick, provided said non-indigent sick pay a reasonable fee for such hospitalization, and provided further that, except in cases of emergency, there are no indigent sick needing hospitalization who would be deprived of hospitalization by reason of the use of said hospital facilities by non-indigents. The board of county commissioners of any county of this state which now has, or may hereafter acquire, title to a site and building, or buildings, suitable for county hospital purposes, shall have jurisdiction and power under such limitations and restrictions as are prescribed by law to furnish and equip such building, or buildings, for hospital purposes in accordance with and as provided by the provisions of this act.

Nothing herein contained shall be construed as amending or repealing sections 16-1163 to 16-1165.

History: En. Subd. 9, Sec. 1, Ch. 100, L. 1931; amd. Sec. 1, Ch. 56, L. 1947; amd. Secs. 1, 2, Ch. 238, L. 1947; amd. Secs. 1, 2, Ch. 5, L. 1949. See history of Sec. 16-1001.

Collateral References

Counties \hookrightarrow 105(1).
20 C.J.S. Counties § 167.

16-1009. (4465.9) Sale of property. (1) The board of county commissioners of the several counties in this state shall have the power to sell any property, real or personal, however acquired, belonging to the county, and which is not necessary to the conduct of the county's business or the preservation of its property. If the property, real or personal, sought to be sold, is reasonably of a value in excess of one hundred (\$100.00) dollars, the sale shall be at public auction at the courthouse door after previous notice given by publication in a newspaper published in said county, notice to be published once a week for four successive weeks and posted in five (5) public places in the county. The sale shall be for cash, or on such terms as the board of county commissioners may approve, provided at least twenty per cent (20%) of the purchase price shall be paid in cash. In all sales of property of a value in excess of one hundred (\$100.00) dollars, there must before any sale be an appraisal thereof by the board and at a price representing a fair market value of such property, and such appraised value shall be stated in the notice of sale, provided, that whenever a county purchases equipment, as provided in section 16-1803, county equipment which is not necessary to the conduct of the county business may be traded in as part of the purchase price after appraisal as herein provided, or may be sold at public auction as herein provided, in the discretion of the board of county commissioners.

(2) Any taxpayer who may believe that such appraised value is less than the actual value of the property, may at any time before the day fixed for the sale of such property, file with the board of county commissioners written objections to such appraised value. When any such objection is filed it vacates the sale and the board of county commissioners must at once apply to the judge of the district court to have such property re-appraised. Upon such application the district judge shall appoint for such purpose three disinterested persons whose appraisal must be made and filed with the county clerk and recorder, which new appraisal or re-appraisal shall be used in the next sale of such property. Such appraisers, when appointed by the district judge, and after filing their appraisal report with the county clerk and recorder, shall be allowed five (\$5.00) dollars per day for each day necessarily employed in making such appraisal, and their necessary and actual expenses. No sale shall be made at public auction of any property unless it has been appraised within three months prior to the date of sale, and no such sale shall be made for less than ninety per cent (90%) of the appraised value.

(3) If no bid or offer is made for any property offered for sale at public auction, after appraisal and notice given, as provided herein, the board of county commissioners may, at any time thereafter, sell such property at private sale, and may on such private sale accept as the purchase price therefor an amount not less than ninety (90%) per cent of the appraised value thereof. All deferred payments on the purchase price of any property sold, shall bear interest at the rate of six per cent (6%) per annum, payable annually and may be extended over a period of not more than five (5) years. If the property to be sold is reasonably of a value of less than one hundred (\$100.00) dollars, sale thereof may be had at either public or private sale, as in the discretion of the board of county commissioners, may appear to be to the best interests of the county. If it be at public sale, notice shall be given by posting in five public places in the county at least five days before the date of sale. No title to any property sold under the provisions hereof, shall pass from the county until the purchaser, or his assigns, shall have paid the full amount of the purchase price therefor, into the county treasury for the use and benefit of the county.

(4) Provided, however, if within one (1) year no immediate sale be had of real estate attempted to be sold under the provisions of this section, the board of county commissioners may make trades or exchanges of such real estate owned by the county for any other lands or real estate of equal value located within the same county.

History: En. Subd. 10, Sec. 1, Ch. 100, L. 1931; amd. Sec. 1, Ch. 30, L. 1953. See history of Sec. 16-1001.

County Has Implied Power to Relieve Against Forfeiture

That the authority of the county commissioners is limited by statute there can be no doubt, but having the implied power to place a forfeiture clause in the contract of sale, the board also has the implied authority to relieve against the for-

feiture provision. In selling lands, the county acts in its proprietary, as distinguished from its governmental functions. The board has such implied powers as are usually exercised by the private seller of property. The rule is universal that a private owner may waive the forfeiture provisions in a contract after a forfeiture has been declared so long as no rights of third persons have intervened. State ex rel. Barnhart v. Cranston, 113 M 61, 66, 120 P 2d 828.

Power to Sell Property

A county is merely a subdivision of the state for governmental purposes, and as such is subject to legislative regulation and control; the legislature may within the limitations prescribed by the constitution, circumscribe or extend the powers to be exercised by a county, and legislative authority to regulate or control the disposition of county property not having been limited by the constitution, it could properly declare, as it did by section 16-804 and this section, that such property may be sold only under the restrictions and in the manner therein indicated. *Franzke v. Fergus County et al.*, 76 M 150, 245 P 962.

Id. Held, on application for writ of injunction, that a county is without power to enter into an agreement to sell land owned by it, on the installment plan, its power in that regard being limited to an actual sale at public auction and for cash by this section.

Id. Held, that the contention of this section, providing the method to be pursued in selling county property, applies only to a sale of property obtained for purely public purposes but no longer needed for such purposes, and that therefore a ranch held by it in its proprietary capacity and not acquired for a public purpose does not fall within its purview, cannot be sustained. 76 M 150, 156 et seq.

When Payment on Installments on Purchase Price of Land Not Completed During Five-year Period

This section and section 2235, R. C. M. 1935 (since repealed), providing that deferred payments on contracts of county-owned lands may not extend over a period

of more than five years, held not open to the construction that at the end of the five-year period the property rights of the vendee shall be lost if the purchase price has not all been paid, but that if there still remain a part of the purchase price unpaid and the vendee offers payment, the county may accept it without violating the provisions of the sections. *Yellowstone County v. Wight*, 115 M 411, 419, 145 P 2d 516.

References

Blackford v. Judith Basin County, 109 M 578, 584, 98 P 2d 872.

Collateral References

Counties 110.

20 C.J.S. *Counties* § 172.

14 Am. Jur. 206, *Counties*, §§ 34 et seq.; 38 Am. Jur. 168, *Municipal Corporations*, § 489.

Power of county as to lease or sublease of property owned or leased by it. 63 ALR 614.

Power of board to make lease extending beyond its own term. 70 ALR 797 and 149 ALR 336.

Power as to mortgage or pledge of property or income therefrom. 71 ALR 828.

Lease of property by municipality or other political subdivision, with option to purchase same, as evasion of constitutional or statutory limitation of indebtedness. 145 ALR 1362.

Constitutional prohibition of municipal corporation lending its credit or making donation as applicable to sale or leasing of its property. 161 ALR 518.

16-1010. Validation of certain sales of property by county commissioners. That all sales of property heretofore made by the board of county commissioners of any county, the title to which was at the time of such sale held by the county for use by any high school or high schools of the county, where the provisions of section 16-1009 have been complied with by such county commissioners, are hereby legalized and declared to be valid and binding sales, and all deeds, contracts, conveyances, bills of sale and other instruments of transfer, heretofore executed by any board of county commissioners, or by its chairman duly authorized by said board, for and on behalf of any county, transferring and conveying any such property so sold, are hereby legalized and declared to be valid and vesting the absolute title of the property so conveyed in the purchaser named in such conveyance or instrument of transfer.

History: En. Sec. 1, Ch. 55, L. 1939.

16-1011. Validation of sales of property by county. All sales or dispositions heretofore made or attempted to be made by any county of any property in which such county had or claimed any right, title or interest are hereby validated and confirmed, and all instruments of transfer or conveyance heretofore made or executed by any county are hereby validated

and confirmed, and all such sales, dispositions and instruments are hereby declared to have vested in the grantee or purchaser, as of the date thereof, all right, title, estate and interest of such county in and to the property described or covered.

History: En. Sec. 1, Ch. 21, L. 1943.

16-1012. Validation of sales of property heretofore made by counties.

All sales or dispositions heretofore made or attempted to be made by any county of any property in which such county had or claimed any right, title or interest are hereby validated and confirmed, and all instruments of transfer or conveyance heretofore made or executed by any county are hereby validated and confirmed, and all such sales, dispositions and instruments are hereby declared to have vested in the grantee or purchaser, as of the date thereof, all right, title, estate and interest of such county in and to the property described or covered.

History: En. Sec. 1, Ch. 186, L. 1945.

16-1013. (4465.10) Examination and allowance of officers' accounts.

The board of county commissioners has jurisdiction and power under such limitations and restrictions as are prescribed by law: At the regular monthly meeting of the board, to examine and allow the accounts of all officers having the care, management, collection or disbursements of moneys belonging to the county, or appropriated by law or otherwise for its use and benefit.

History: En. Subd. 11, Sec. 1, Ch. 100,
L. 1931. See history of Sec. 16-1001.

Collateral References

Counties \Rightarrow 154½.
20 C.J.S. Counties § 229.

16-1014. (4465.11) Accounts to be examined, settled and allowed.

The board of county commissioners has jurisdiction and power under such limitations and restrictions as are prescribed by law: At the regular meetings of the board to examine, settle and allow all accounts legally chargeable against the county except salaries of officers, and order warrants to be drawn on the county treasurer therefor, and provided for the issuing of the same.

History: En. Subd. 12, Sec. 1, Ch. 100,
L. 1931. See history of Sec. 16-1001.

Allowing Accounts

The word "accounts" used in this section must be understood in a broad, generic sense, and as including any right to or claim for money which is due and payable from the county treasury. *State ex rel. Dolin v. Major*, 58 M 140, 148, 192 P 618.

Construing prior to amendment, the board of county commissioners is given power "to examine, settle and allow all accounts legally chargeable against the county except salaries of officers, and order warrants to be drawn on the county treasurer therefor, and provides for the issuing of the same." The relators' claims come within the meaning of the word "account" as used in this statute. *State ex rel. Lockwood v. Tyler*, 64 M 124, 131, 208 P 1081.

Construing prior to amendment, the right to recover from the county depends, not only upon the authority of the county attorney to incur liability against the county, but also upon the necessity for incurring the expense, whether in connection with criminal cases or "contingent expenses necessarily incurred for the use and benefit of the county." The necessity is, primarily, to be determined by the county attorney, but his determination is subject to review by the board when it takes up the claim for allowance or disallowance, under the authority vested in it by this section. *In re Hyde*, 73 M 363, 368, 236 P 248.

Held, that since under this section, the board of county commissioners is authorized to examine, settle and allow all claims against the county, its failure to ascertain whether charges made under a county printing contract were in accordance there-

with deprives the county of the right to charge that claims filed for work done under the contract were fraudulent. *Carbon County v. Draper*, 84 M 413, 419 et seq., 276 P 667.

Collateral References

Counties \Rightarrow 204(1).
20 C.J.S. Counties § 305.

Power of county or its officials to compromise claim. 15 ALR 2d 1359.

16-1015. (4465.12) Taxation. The board of county commissioners has jurisdiction and power under such limitations and reservations as are prescribed by law: To levy such tax annually on the taxable property of the county, for county purposes as may be necessary to defray the current expenses thereof, including the salaries otherwise unprovided for, not exceeding sixteen (16) mills on each dollar of the taxable valuation for any one (1) year and to levy such taxes as are required to be levied by special or local statutes. Provided, however, that on and after July 1, 1955, and extending to June 30th, 1957, the board of county commissioners is authorized in its discretion to levy not to exceed (20) mills on each dollar of the taxable valuation for any one (1) year.

History: En. Subd. 13, Sec. 1, Ch. 100, L. 1931; amd. Sec. 1, Ch. 114, L. 1949; amd. Sec. 1, Ch. 169, L. 1951; amd. Sec. 1, Ch. 185, L. 1953; amd. Sec. 1, Ch. 69, L. 1955. See history of Sec. 16-1001.

Construction Relative To Maximum Levy

This section, first appearing in the Political Code of 1895, and later as subd. 13 of section 4465, R. C. M. 1921, never having been changed, since the enactment of the classification statutes (secs. 84-301 and 84-302), it must now be given the same meaning it had after the passage of the classification act under section 43-510, irrespective of Ch. 100, Laws 1931, professing to repeal section 4465, R. C. M. 1921 (1935), and subsequent amendments, relating to certain powers of boards of county commissioners, but reenacting the section in its original form. *Northern Pacific Railway Co. v. Dunham*, 108 M 338, 344, 90 P 2d 506.

Levy of Nineteen Mills Held Excessive

In an action to recover taxes paid under protest, held, that while this section in limiting the power of the county commissioners to levy a tax for county purposes to sixteen mills on the dollar of the assessed valuation of property, since the enactment of sections 84-301 and 84-302, as construed in *Wibaux Improvement Co. v.*

Breitenfeldt, 67 M 206, 215 P 222, the term "assessed" must be read "taxable," and that therefore a levy of nineteen mills on the taxable value of plaintiff's property was excessive to the extent of three mills. *Northern Pacific Railway Co. v. Dunham*, 108 M 338, 343, 90 P 2d 506.

Power to Tax

Under the law as it stood in 1892, the commissioners of a county had power to levy a tax on the taxable property of a school district within their county to satisfy a judgment against the trustees of such district, where the funds under the control of such district were insufficient to pay the same, and mandamus was available to compel such levy without a statute expressly authorizing county commissioners to make an assessment for such purpose. *State ex rel. Shapley v. Board of Commrs. of Yellowstone Co.*, 12 M 503, 507, 31 P 78.

Collateral References

Counties \Rightarrow 190(1, 2).
20 C.J.S. Counties § 279.

Power to remit, release or compromise tax claim. 28 ALR 2d 1425.

Inclusion of tax exempt property in determining value of taxable property for debt limit purposes. 30 ALR 2d 903.

16-1016. (4465.13) Equalizing assessments. The board of county commissioners has jurisdiction and power under such limitations and restrictions as are prescribed by law: To equalize the assessments.

History: En. Subd. 14, Sec. 1, Ch. 100, L. 1931. See history of Sec. 16-1001.

References

Northern Pacific Railway Co. v. Dunham, 108 M 338, 340, 90 P 2d 506.

Collateral References

Counties \Rightarrow 193.
20 C.J.S. Counties § 284.

16-1017. (4465.14) Direction of law suits. The board of county commissioners has jurisdiction and power under such limitations and restrictions as are prescribed by law: To direct and control the prosecution and defense of all suits to which the county is a party.

History: En. Subd. 15, Sec. 1, Ch. 100, L. 1931. See history of Sec. 16-1001.

Where Commissioners May Waive Privilege of Pleading Statute of Limitations

The commissioners, under this section, may decline to plead the statute of limitations in an action on a claim against the county, whenever in its opinion the facts showing that bar of the statute could not be established, and therefore may stipu-

late in an agreed statement that the claim is not barred. The statute of limitations grants a personal privilege which may be waived; it must be pleaded to be available as a defense. *Weir v. Silver Bow County*, 113 M 237, 242, 124 P 2d 1003.

Collateral References

Counties⇒47.
20 C.J.S. Counties § 81.

16-1018. (4465.15) Insurance of county buildings. The board of county commissioners has jurisdiction and power under such limitations and restrictions as are prescribed by law: To insure the county buildings in the name of and for the benefit of the county and shall have the power to use the proceeds of any insurance policy which may be paid by reason of a loss covered thereby for the purpose of rebuilding the structure lost or damaged or if the fire insurance proceeds are less than twenty-five thousand dollars (\$25,000.00), for building new structures or buildings.

History: En. Subd. 16, Sec. 1, Ch. 100, L. 1931; amd. Sec. 1, Ch. 116, L. 1953. See history of Sec. 16-1001.

Collateral References

Counties⇒107.
20 C.J.S. Counties § 169.
14 Am. Jur. 208, Counties, § 38.

Right or duty to carry insurance on public property. 100 ALR 600.

Liability or indemnity insurance carried by government or political subdivision thereof, or by charitable institution, in respect of injury or damage as to which it is otherwise immune from liability. 145 ALR 1336.

16-1019. (4465.16) Licenses. The board of county commissioners has jurisdiction and power under such limitations and restrictions as are prescribed by law: To grant licenses for keeping ferries, and such other licenses as are provided by law.

History: En. Subd. 17, Sec. 1, Ch. 100, L. 1931. See history of Sec. 16-1001.

Retail liquor dealers, authority to license, sec. 4-430.

Cross-References

Carrying on business without license, penalty, sec. 94-1511.
County licenses, sec. 84-2701 et seq.

Collateral References

Counties⇒47.
20 C.J.S. Counties § 81.

16-1020. (4465.17) Fixing of compensation of officers not otherwise provided for. The board of county commissioners has jurisdiction and power under such limitations and restrictions as are prescribed by law: To fix the compensation of all county officers not otherwise in this code or by general or special law fixed, and provide for the payment of the same.

History: En. Subd. 18, Sec. 1, Ch. 100, L. 1931. See history of Sec. 16-1001.

16-1021. (4465.18) Filling vacancies in county, township and precinct offices. The board of county commissioners has jurisdiction and power under such limitations and restrictions as are prescribed by law: To fill by appointment all vacancies that may occur in county, township or precinct offices, except in the office of county commissioner.

History: En. Subd. 19, Sec. 1, Ch. 100, L. 1931. See history of Sec. 16-1001.

Collateral References

Counties⊖65.

20 C.J.S. Counties § 107.

16-1022. (4465.19) **Contract for printing and supplies.** The board of county commissioners has jurisdiction and power under such limitations and restrictions as are prescribed by law: To contract for the county printing, and provide books and stationery for county officers.

History: En. Subd. 20, Sec. 1, Ch. 100, L. 1931. See history of Sec. 16-1001.

Collateral References

Counties⊖113(4).

20 C.J.S. Counties § 179.

43 Am. Jur. 764, Public Works and Contracts, §§ 23 et seq.

Bidder's variation from specifications on bid for public work. 65 ALR 835.

Evasion of law requiring contract for public work to be let to lowest responsible bidder by subsequent changes in contract after it has been awarded pursuant to that law. 69 ALR 697.

What is an "emergency" within statutory provisions excepting emergency contract for work or requirement of bidding on public contracts. 71 ALR 173.

Right in submitting proposal for bids on public works to require bid on unit basis, with reservation to public authorities of right to determine amount or extent of work. 79 ALR 225.

Rights and remedies of bidder for public contract who has not entered into a con-

tract, where bid was based on his own mistake of fact or that of his employees. 80 ALR 586.

Mandamus to compel consideration, acceptance, or rejection of bids for public contract. 80 ALR 1382.

Right to award public contract to one other than lowest financial bidder as affected by fact that bidder furnishes bond. 86 ALR 131.

Change in proposals for public contract after submission of bid as justification for withdrawal of bid or refusal to enter into contract. 104 ALR 1149.

Labor conditions or relations as factor in determining lowest responsible bidder for public contract or as factor in determining whether public contract should be let to lowest bidder. 110 ALR 1406.

Statute requiring competitive bidding for public contract as affecting validity of agreement, subsequent to the award of the contract, to allow the contractor additional compensation for extras or additional labor and material not included in the written contract. 135 ALR 1265.

16-1023. (4465.20) **Publication of proceedings, list of claims, financial statement.** The board of county commissioners has jurisdiction and power under such limitations and restrictions as are prescribed by law: At the adjournment of each session of the board to cause to be published in a newspaper, a complete list of all claims ordered paid for all purposes showing the name, purpose and amount, and a fair summary of the minutes and records of all of its proceedings, and also to be published annually in a newspaper the county clerk's annual statement of the financial condition of the county; and provided that publication of such minutes and records of proceedings must be made within twenty-one (21) days after the adjournment of the session, and publication of the financial statement must be made within thirty (30) days after the presentation of the same to the board of county commissioners, and the board of county commissioners shall not allow or order paid any claim for any such publication of minutes and records of proceedings or annual financial statement unless made within the time herein prescribed therefor.

History: En. Subd. 21, Sec. 1, Ch. 100, L. 1931. See history of Sec. 16-1001.

Collateral References

Counties⊖159.

20 C.J.S. Counties § 232.

16-1024. (4465.21) **Representing and management of county property and business.** The board of county commissioners has jurisdiction and power under such limitations and restrictions as are prescribed by law:

To represent the county, and have the care of the county property, and the management of the business and concerns of the county in all cases where no other provision is made by law. It shall be their duty to prepare and file with the county clerk and recorder an annual inventory covering all county tools, machinery and equipment. Provided further that whenever such tools, machinery or equipment are loaned or leased to private individuals, firms, associations, organizations or corporations that they shall execute a written agreement stating the purpose of such loan or lease, the compensation to be paid the county, and that such tools, machinery and equipment will be returned in good condition.

History: En. Subd. 22, Sec. 1, Ch. 100, L. 1931; amd. Sec. 1, Ch. 144, L. 1949. See history of Sec. 16-1001.

References

State ex rel. Bowler v. Board of County Commissioners, 106 M 251, 258, 76 P 2d 648.

Collateral References

Tort liability of municipality or other governmental unit in connection with destruction of weeds and the like. 34 ALR 2d 1210.

16-1025. (4465.22) Rules and enforcement. The board of county commissioners has jurisdiction and power under such limitations and restrictions as are prescribed by law: To make and enforce such rules for its government, the preservation of order and the transaction of business, as may be necessary.

History: En. Subd. 23, Sec. 1, Ch. 100, L. 1931. See history of Sec. 16-1001.

Collateral References

Counties[Ⓒ]51.
20 C.J.S. Counties § 80.

16-1026. (4465.23) Seal of county. The board of county commissioners has jurisdiction and power under such limitations and restrictions as are prescribed by law: To adopt a seal for the board, a description and impression thereof must be filed by the clerk in the offices of the county clerk and the secretary of state.

History: En. Subd. 24, Sec. 1, Ch. 100, L. 1931. See history of Sec. 16-1001.

16-1027. (4465.24) Necessary acts. The board of county commissioners has jurisdiction and power under such limitations and restrictions as are prescribed by law: To perform all other acts and things required by law not in this title enumerated, or which may be necessary to the full discharge of the duties of the chief executive authority of the county government.

History: En. Subd. 25, Sec. 1, Ch. 100, L. 1931. See history of Sec. 16-1001.

16-1028. (4465.25) Borrowing money. The board of county commissioners has jurisdiction and power under such limitations and restrictions as are prescribed by law: To borrow money upon the credit of the county to meet current expenses, if the county revenue is insufficient.

History: En. Subd. 26, Sec. 1, Ch. 100, L. 1931. See history of Sec. 16-1001.

20 C.J.S. Counties § 222.
14 Am. Jur. 222, Counties, §§ 62, 63.

Collateral References

Counties[Ⓒ]153.

16-1029. (4465.26) Bonds for construction may be issued. The board of county commissioners has jurisdiction and power under such limitations

and restrictions as are prescribed by law: To issue on the credit of the county, coupon bonds to an amount sufficient to secure the necessary funds for the procurement of necessary building sites, for the construction of necessary public buildings, and for the construction of bridges and highways, in accordance with the provisions of the code.

History: En. Subd. 27, Sec. 1, Ch. 100, L. 1931. See history of Sec. 16-1001.

Collateral References

Counties—164.

20 C.J.S. Counties § 248.

14 Am. Jur. 222, Counties, §§ 61 et seq.;

43 Am. Jur. 261, Public Securities and Obligations generally.

Sale of public bonds at less than par or face value. 91 ALR 7.

Printing, lithographing, or other mechanical signature on public bonds, coupons, or other public pecuniary obligations. 94 ALR 768.

Meaning of term "assessment" or "assessed valuation" when used as basis of tax or debt limit. 156 ALR 594.

16-1030. (4465.27) Lease of county property. The board of county commissioners has jurisdiction and power under such limitations and restrictions as are prescribed by law: To lease and demise county property, however acquired, which is not necessary to the conduct of the county's business or the preservation of county property and for which immediate sale cannot be had. Such leases shall be in such manner and for such purposes as, in the judgment of the board, shall seem best suited to advance the public benefit and welfare, and all revenue derived therefrom, except as otherwise provided, shall be paid into the county treasury. On the tenth day of January and the tenth day of July in each year the county treasurers shall distribute such revenues to the several county and trust and agency funds on the basis of the tax levy for the preceding calendar year. All such property must be leased subject to sale by the board, and no lease shall be for a period to exceed three (3) years, save and except as to deposits of coal only or coal and the surface above the same, owned by any county or to which any county has heretofore or may hereafter acquire title by tax title, tax deed or otherwise, which lease or leases may be for a period of ten years and to run and continue as long thereafter as coal is being mined and extracted from the leased property in commercial quantities and that as to all such deposits of coal only or coal and surface the provisions of sections 2208.1 and 2235 of the Revised Codes of the state of Montana, A. D. 1935 and all other provisions of the laws of Montana relating to the sale by the county commissioners of a county of property owned by the county or acquired by tax title or otherwise shall be suspended during the time any such lease or leases of coal only or coal and surface made hereunder shall be in force and effect.

History: En. Subd. 28, Sec. 1, Ch. 100, L. 1931; amd. Sec. 1, Ch. 152, L. 1937. See history of Sec. 16-1001.

NOTE.—Sections 2208.1 and 2235, referred to above, were repealed by Sec. 10, Ch. 171, Laws 1941.

Collateral References

Counties—110; Mines and Minerals—5.

20 C.J.S. Counties § 172; 58 C.J.S. Mines and Minerals § 129.

14 Am. Jur., Counties, p. 200, §§ 28 et seq., p. 207, § 36; 38 Am. Jur. 168, Municipal Corporations § 489.

Power of county as to lease or sublease of property owned or leased by it. 63 ALR 614.

Power of board to make lease extending beyond its own term. 70 ALR 797 and 149 ALR 336.

Power as to mortgage or pledge of property or income therefrom. 71 ALR 828.

Lease of property by municipality or other political subdivision, with option to purchase same, as evasion of constitutional or statutory limitation of indebtedness. 145 ALR 1362.

Constitutional prohibition of municipal corporation lending its credit or making donation as applicable to sale or leasing of its property. 161 ALR 518.

16-1031. (4465.28) **Garbage and ash collection — tax.** The board of county commissioners has jurisdiction and power under such limitations and restrictions as are prescribed by law: To create, abolish and change garbage and ash collection districts in thickly settled areas outside of the limits of incorporated cities and towns. Such districts shall be created under rules to be promulgated by said board, which rules shall provide for petition on the part of a majority of taxpayers residing within such areas, for the survey of proposed districts by the county health officer as to boundaries and methods for disposal of garbage and ashes within such districts. When such a district has been created under the authority of this section the county commissioners shall be authorized and empowered to levy not to exceed five (5) mills on the taxable property within such district for the maintenance and support thereof and for the purchase or leasing of land necessary for said purpose.

History: En. Subd. 29, Sec. 1, Ch. 100, L. 1931; amd. Sec. 1, Ch. 108, L. 1947. See history of Sec. 16-1001.

law (16-1901 to 16-1911) is authorized to be paid by Ch. 170, Laws 1949. See note to sec. 16-1901.

Compiler's Note

Indebtedness incurred in good faith prior to August 1, 1948 for collection of garbage but in violation of the budget

Collateral References

Counties \hookrightarrow 20.
20 C.J.S. Counties § 43.

16-1032. (4465.29) **Lease of county property for hospital purposes.** The board of county commissioners has jurisdiction and power under such limitations and restrictions as are prescribed by law: To lease and demise county buildings, equipment, furniture and fixtures, for hospital purposes, with full power of lessor, except as hereinafter limited, upon such terms and conditions as the board shall decide upon. The rentals received under such lease or leases shall be paid into the general fund of the county.

No such lease and demise shall be made for a longer period than five years, nor shall said board enter into a contract of lease without and until first having advertised in a newspaper published in the county at least once a week for five weeks and that the said buildings and equipment are for lease for hospital purposes.

History: En. Subd. 30, Sec. 1, Ch. 100, L. 1931. See history of Sec. 16-1001.

Collateral References

Counties \hookrightarrow 110.
20 C.J.S. Counties § 172.

16-1033. (4466) **Validation of county sales of real property.** All sales heretofore made of real property owned in fee simple by any county in this state, by the board of county commissioners of any county, the validity of which may be in doubt or involved by reason of the failure of the board of county commissioners to comply with the provisions of section 16-1009, are hereby legalized and declared to be valid and binding sales, and all deeds or conveyances heretofore executed by any board of county commissioners, or by its chairman duly authorized by said board, for and on behalf of any county, transferring and conveying any such property so sold, are hereby legalized and declared to be valid, and vesting the title of the

property so conveyed in the purchaser named in such conveyance in fee simple.

History: En. Sec. 1, Ch. 103, L. 1913;
re-en. Sec. 4466, R. C. M. 1921; amd. Sec.
1, Ch. 45, L. 1937.

Collateral References
Counties \Rightarrow 110.
20 C.J.S. Counties § 172.

16-1034. County membership in organizations authorized. The boards of county commissioners of the several counties of the state of Montana are hereby authorized and empowered to take out county membership in and to cooperate with associations and organizations of other counties or county officials of this state and of other states for the furtherance of good government and the protection of county interests and to pay for such membership in such associations or organizations with county funds.

History: En. Sec. 1, Ch. 104, L. 1947.

16-1035. Validation of county conveyances heretofore made. All sales or dispositions heretofore made or attempted to be made by any county of any property in which such county had or claimed any right, title or interest are hereby validated and confirmed, and all instruments of transfer or conveyance heretofore made or executed by any county are hereby validated and confirmed, and all such sales, dispositions and instruments are hereby declared to have vested in the grantee or purchaser, as of the date thereof, all right, title, estate and interest of such county in and to the property described or covered.

History: En. Sec. 1, Ch. 180, L. 1947.

CHAPTER 11

SPECIAL POWERS AND DUTIES OF COUNTY COMMISSIONERS

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| Section | 16-1101. Records of water users' associations. |
| | 16-1102. New townships, how organized. |
| | 16-1103. Sheriff to attend meetings when directed. |
| | 16-1104. County commissioners may protect forests. |
| | 16-1105. Appropriating money for advertising of county products authorized. |
| | 16-1106. Limitations on appropriations—transmittal to department of agriculture, when. |
| | 16-1107. Transfer of funds to relief fund authorized, when. |
| | 16-1108. County commissioners may establish public scales. |
| | 16-1109. Capacity of scales. |
| | 16-1110. Public weigher. |
| | 16-1111. Duty of public weigher. |
| | 16-1112. Rules and regulations. |
| | 16-1113. False receipts. |
| | 16-1114. Commissioners may grant right to construct mains for gas, water and other substances—compensation for damages. |
| | 16-1115. Effect of act. |
| | 16-1116. Public ferries and wharves—establishment and maintenance by counties. |
| | 16-1117. Same—acquisition of real property—proviso as to incorporated cities and towns. |
| | 16-1118. Ferries uniting two counties—reports of ferrymen on joint ferries. |
| | 16-1119. Employment of ferrymen—leasing ferries and wharves. |
| | 16-1120. Rules and regulations—posting rate of toll. |
| | 16-1121. Definition of "minerals" and "real property." |
| | 16-1122. Validation of mineral reservations heretofore made by counties. |
| | 16-1123. Rewards by county commissioners for apprehension of criminals. |
| | 16-1124. Employment of stock inspector by county commissioners. |

- 16-1125. Secrecy to be maintained regarding employment of stock inspector.
- 16-1126. Special counsel—acting county attorney.
- 16-1127. Auto passes excluding livestock may be constructed on public roads connecting with fenced state highway.
- 16-1128. Same—construction on public or county roads—purpose and intent of act.
- 16-1129. Construction of auto pass not to deprive legal fence of character.
- 16-1130. Extension work in agriculture and home economics—county commissioners may appropriate money for.
- 16-1131. Counties authorized to deed land for park to state or United States—reversion of title.
- 16-1132. Exchanging tax deed land for United States land authorized.
- 16-1133. Disposal of timber acquired by counties.
- 16-1134. Sale of land and timber acquired.
- 16-1135. Conveyance to United States—effect—notice not required—expenses.
- 16-1136. County commissioners may erect market houses and establish markets.
- 16-1137. Acquisition of property for establishment and maintenance of public markets.
- 16-1138. County auditor or county clerk to act as market-master—powers and duties.
- 16-1139. Five per centum of gross sales to be paid to county—county market fund—penalty for refusal to pay.
- 16-1140. When market shall be open—publication of rules and regulations and notice of market days.
- 16-1141. Expense of establishing and maintaining public market—how paid.
- 16-1142. Purchase of products for resale or speculation prohibited.
- 16-1143 to 1148. Repealed.
- 16-1149. Destruction of insect pests by county commissioners.
- 16-1150. Compensation of appointees—manner of payment.
- 16-1151. Purchase of poison and equipment—manner of payment.
- 16-1152. Tax levy for payment of warrants.
- 16-1153. "Insect pest" defined.
- 16-1154. Lease of county fair grounds and buildings, power of commissioners concerning.
- 16-1155. Disposal of moneys received.
- 16-1156. Board to provide appliances for holding elections and allow expenses.
- 16-1157. Issuance of certificates of election as board of canvassers.
- 16-1158. Power to require attendance of witnesses.
- 16-1159. Examination of witnesses.
- 16-1160. Officers and witnesses not to be prepaid.
- 16-1161. Liability on official bond of commissioner.
- 16-1162. Employment of persons to administer relief received from federal agencies.
- 16-1163. County commissioners may accept museums, etc.
- 16-1164. Tax levy for support of museums.
- 16-1165. Board of trustees for museums—appointment and duties.
- 16-1166. Public dance regulation—definitions.
- 16-1167. License for public dance.
- 16-1168. County commissioners to fix dance hall license fees.
- 16-1169. Immoral or suggestive dancing prohibited—lights required.
- 16-1170. Rules and regulations for public dances to be made by county commissioners—officers' duty.
- 16-1171. Application for and issuance of license—display of license required.
- 16-1172. Commissioners may revoke license—grounds for revocation.
- 16-1173. Enforcement of provisions concerning public dances.
- 16-1174. Violations and penalty.
- 16-1175. Control of noxious rodents—cooperation.
- 16-1176. Expenditures for supplies and services.
- 16-1177. Appropriation authorized—county rodent control fund—tax levy.
- 16-1178. Purchase of supplies for cooperators—receipts from supplies—fund established.
- 16-1179. County-owned civic center, youth center, recreation center—tax levy for maintenance and operation.

16-1101. (4467) Records of water users' associations. The county commissioners of each county where water users' associations, organized in con-

formity with the laws of the United States under the reclamation act, have organized, or wherein such associations shall hereafter organize, are required to furnish the county recorder, for the proper recording of stock subscriptions and contracts, and of articles of incorporation and stock certificates of such companies, books to conform to such articles of incorporation, stock certificates, and contracts as are used by the secretary of such water users' associations, containing printed blank forms of such stock subscriptions and contracts, and articles of incorporation and stock certificates, in accordance with the laws of the United States and of the state of Montana, such forms to be prepared by the attorney general and used by the county recorder for the recording of all such stock subscriptions, contracts, articles of incorporation, and stock certificates.

The county recorder shall charge fifty cents for recording each stock subscription and contract, stock certificate, and articles of incorporation.

History: En. Sec. 1, Ch. 68, L. 1909;
re-en. Sec. 4467, R. C. M. 1921.

Related sections: 25-110, 89-1101 to 89-1106.

Collateral References

Counties↪47.

20 C.J.S. Counties § 81.

16-1102. (4468) New townships, how organized. The board must not set off or organize any new township unless a petition is presented to the board, signed by at least fifty citizens resident therein.

History: En. Sec. 18, p. 502, Bannack Stat.; re-en. Sec. 18, p. 436, Cod. Stat. 1871; re-en. Sec. 352, 5th Div. Rev. Stat. 1879; re-en. Sec. 757, 5th Div. Comp. Stat. 1887; re-en. Sec. 4231, Pol. C. 1895; re-en. Sec. 2895, Rev. C. 1907; re-en. Sec. 4468, R. C. M. 1921.

Collateral References

Towns↪9.

87 C.J.S. Towns § 23.

16-1103. (4469) Sheriff to attend meetings when directed. The board has the power to direct the sheriff to attend in person or by deputy all the meetings of the board, to preserve order, and serve notices or citations, as directed by the board. And the board has the same power to punish for contempt, by fine and imprisonment, as is now exercised and allowed by law to district courts to require obedience to their citations and decorum in their meetings.

History: En. Sec. 4232, Pol. C. 1895;
re-en. Sec. 2896, Rev. C. 1907; re-en. Sec. 4469, R. C. M. 1921. Cal. Pol. C. Sec. 4047.

Collateral References

Counties↪52.

20 C.J.S. Counties § 88.

16-1104. (4470) County commissioners may protect forests. The board of county commissioners of any county may provide money for the purposes of forest protection, improvement, and management.

History: En. Sec. 105, Ch. 147, L. 1909;
re-en. Sec. 4470, R. C. M. 1921.

Collateral References

Woods and Forests↪5.

71 C.J. Woods and Forests § 9.

16-1105. (4470.1) Appropriating money for advertising of county products authorized. The board of county commissioners of any county in the state is hereby authorized to make an appropriation of money from the general fund of the county for the purpose of advertising the agricultural, commercial, mining, manufacturing, labor or other resources of the county, through the exposition exhibits committee of the state department of agri-

culture, labor and industry, or for the purpose of assisting the said department of agriculture in presenting exhibits of Montana products at fairs or expositions outside the state of Montana.

History: En. Sec. 1, Ch. 107, L. 1927.

Collateral References

Counties \hookrightarrow 153½.

20 C.J.S. Counties § 236.

16-1106. (4470.2) Limitations on appropriations — transmittal to department of agriculture, when. Said appropriation shall not exceed in any one year the following amounts, to-wit: in counties of the first class or second class, one thousand dollars (\$1,000.00); in counties of the third class, five hundred dollars (\$500.00); in all other counties, two hundred fifty dollars (\$250.00). Said money shall be expended in such manner as the board of county commissioners may direct or may be transmitted to the department of agriculture, when such appropriation is for the purpose of assisting said department in advertising the resources or presenting the exhibits hereinabove indicated.

History: En. Sec. 2, Ch. 107, L. 1927.

16-1107. (4470.3) Transfer of funds to relief fund authorized, when. Whenever the governor of the state of Montana shall issue a proclamation declaring that an emergency exists in any county requiring the relief of suffering of the inhabitants thereof caused by famine, destitution, conflagration or other public calamity, the board of county commissioners of such county is authorized to transfer to the proper fund to be used for purposes of such relief any moneys in any other fund or funds of the county, but no moneys belonging to any bond sinking or interest fund or any school fund must be so transferred. The governor shall in his proclamation state the facts upon which such emergency is declared and shall specifically limit the time during which such transfers may be made.

History: En. Sec. 1, Ch. 43, L. 1933.

Collateral References

Counties \hookrightarrow 162.

20 C.J.S. Counties § 235.

16-1108. (4471) County commissioners may establish public scales. The board of county commissioners of any county is hereby authorized, in its discretion, when petitioned by twenty-five or more residents and freeholders of the county, to establish and locate public scales at any suitable location selected by the county commissioners within the county.

History: En. Sec. 1, Ch. 22, L. 1905;
re-en. Sec. 2899, Rev. C. 1907; re-en. Sec.
4471, R. C. M. 1921.

Collateral References

Weights and Measures \hookrightarrow 8.

68 C.J. Weights and Measures § 12 et seq.

16-1109. (4472) Capacity of scales. Such scales shall be purchased by the county, and be of not less than five tons' weighing capacity, and shall be provided with glass or open front which can be observed by the one weighing, without dismounting from wagon, and shall be the property of the county, and at all times be under its control and subject to the will of the county commissioners.

History: En. Sec. 2, Ch. 22, L. 1905;
re-en. Sec. 2900, Rev. C. 1907; re-en. Sec.
4472, R. C. M. 1921.

16-1110. (4473) Public weigher. The board of county commissioners shall appoint at each place where public scales are established by them a public weigher, who shall have the custody and care of such property, and who shall give a bond to the county in the sum of five hundred dollars, conditioned for the safe-keeping of the same, and for the faithful and impartial discharge of the duties incident to his trust in office.

History: En. Sec. 3, Ch. 22, L. 1905;
re-en. Sec. 2901, Rev. C. 1907; re-en. Sec.
4473, R. C. M. 1921.

16-1111. (4474) Duty of public weigher. It shall be the duty of each public weigher to keep a stub record of all weighing done by him, which record and the receipt issued by such public weigher shall show for whom property was weighed, and the character and kind thereof, and shall constitute prima facie evidence of the facts therein contained; and all such stub records, or other records which the county commissioners may require him to keep, shall at all times be open to public inspection during business hours, between seven a. m. and six p. m. of any day, save and except Sundays and legal holidays, and such public weigher shall file a sworn statement with the county recorder of the county, as prescribed by the county commissioners thereof, which statement shall show the date and character or kind of property weighed, for whom weighed, and a complete statement of all fees collected.

History: En. Sec. 4, Ch. 22, L. 1905;
re-en. Sec. 2902, Rev. C. 1907; re-en. Sec.
4474, R. C. M. 1921.

16-1112. (4475) Rules and regulations. Such public weigher shall receive not to exceed ten cents for each receipt issued by him, and shall be governed by such rules and regulations as may be from time to time prescribed or adopted by the board of county commissioners, and he may be removed at any time by such board.

History: En. Sec. 5, Ch. 22, L. 1905;
re-en. Sec. 2903, Rev. C. 1907; re-en. Sec.
4475, R. C. M. 1921.

16-1113. (4476) False receipts. Any public weigher, under the provisions of this act, who shall make any false or fraudulent receipt of any weighing done by him, or shall be guilty of any collusion with any other person or persons for the purpose of deceiving any person or persons in regard to the correctness of weights, or who shall fail to comply with the requirements of the preceding section, is guilty of a misdemeanor.

History: En. Sec. 6, Ch. 22, L. 1905;
re-en. Sec. 2904, Rev. C. 1907; re-en. Sec.
4476, R. C. M. 1921.

Collateral References
Counties⇒102.
20 C.J.S. Counties § 146.

16-1114. (4476.1) Commissioners may grant right to construct mains for gas, water and other substances—compensation for damages. That the board of county commissioners of any county of the state of Montana shall have the power and authority to grant to any person, association or corporation the right to construct and maintain in, along and under any public road or highway within such county, any pipe line for the conveyance of natural or artificial gas, water or any other substance, for the use of any

county, city or town, or the inhabitants thereof; provided, that, when constructed, such pipeline shall not now or in the future interfere with the surface use of such road or highway; and provided further, that the person, association or corporation owning or constructing such pipe line shall compensate such county for any and all damages done to any such road or highway in the laying, construction or maintenance of such pipe line, and shall promptly restore any such road or highway to its former condition of usefulness, without interference with the traffic thereon.

History: En. Sec. 1, Ch. 75, L. 1927.

Collateral References

Highways⌒154.

40 C.J.S. Highways §§ 217, 218.

16-1115. (4476.2) Effect of act. Nothing in this act contained shall be construed as in any manner affecting any of the terms and provisions of sections 93-9901 through 93-9926.

History: En. Sec. 2, Ch. 75, L. 1927.

16-1116. (4477) Public ferries and wharves—establishment and maintenance by counties. When it shall be made to appear by petition to any board of county commissioners in this state that it is necessary to keep and maintain a public ferry across, or a wharf at any unfordable stream, lake, estuary, or bay, any county within the state, through its board of county commissioners, is hereby authorized to construct, or to acquire by condemnation or purchase, and to operate, maintain, direct, regulate, and control the operation of a ferry across or a wharf at any unfordable stream, lake, estuary, or bay, within or bordering on said county, together with all the necessary boats, grounds, roads, approaches, landings, and improvements pertaining thereto, with full jurisdiction and authority to operate and maintain the same free or for toll.

History: En. Sec. 1, Ch. 33, L. 1909;
re-en. Sec. 4477, R. C. M. 1921.

Collateral References

Ferries⌒5; Wharves⌒5.

36 C.J.S. Ferries § 5; 68 C.J. Wharves § 5.

References

Cited or applied as chapter 33, Laws of 1909, in *Reid v. Lincoln County*, 46 M 31, 63, 125 P 429.

16-1117. (4478) Same—acquisition of real property—proviso as to incorporated cities and towns. The board of county commissioners, in the exercise of the power herein bestowed, may acquire real property as provided in sections 93-9901 to 93-9926, provided, that no county ferry or wharf shall be established or maintained with a landing-place in any incorporated town or city, which, by its charter, is vested with the power to build and regulate ferries, wharves, or landings at the foot of streets terminating at a river or harbor.

History: En. Sec. 2, Ch. 33, L. 1909;
re-en. Sec. 4478, R. C. M. 1921.

16-1118. (4479) Ferries uniting two counties—reports of ferrymen on joint ferries. When public ferries, if constructed, would unite two counties, the boards of county commissioners may act jointly to construct, maintain, and operate any such ferry or ferries, provided that each county shall acquire its own landings and approaches, and maintain the same separately.

Where ferrymen are employed on joint ferries, each county board shall receive a quarterly report from said ferrymen, giving such information as the board of county commissioners of either county may require.

History: En. Sec. 3, Ch. 33, L. 1909;
re-en. Sec. 4479, R. C. M. 1921.

16-1119. (4480) Employment of ferrymen—leasing ferries and wharves. Any county of the state may own and establish and the board of county commissioners of any county of the state may operate and manage free or toll ferries and wharves for the use of the public and may employ one or more ferrymen to operate such free or toll ferries and wharves; and, while such ferry or wharves are so owned by any county and operated and managed by such board of county commissioners, such operation shall be and is hereby expressly declared to be a governmental function. The board of county commissioners may also lease any ferries or wharves owned by such county, to a company, firm, or individual to be operated for the use of the public; and said company, firm, or individual shall give bond in an amount deemed sufficient by the board of county commissioners, and conditioned for the careful and business-like operation of such ferry or wharf, in accordance with law and the regulations of said board. While such ferry or wharf is so operated by lessee of said county, such operation is expressly declared to be the private function of such lessee.

History: En. Sec. 4, Ch. 33, L. 1909;
re-en. Sec. 4480, R. C. M. 1921; amd. Sec. 1, Ch. 38, L. 1943.

Operation of Ferry a Proprietary Function

The fact that operation of a ferry by a county constitutes a proprietary, rather than a governmental function, held apparent from the fact that the legislature by this section provided that counties may

lease ferries to individuals or corporations for use by the public, since governmental powers may not be thus delegated; held also that while counties are not liable for negligent act etc., unless liability is fixed by statute, in voluntary assumption of duties in their proprietary capacity, they are held to same degree of liability for tort as private corporations. *Jacoby v. Chouteau County*, 112 M 70, 73, 112 P 2d 1068.

16-1120. (4481) Rules and regulations—posting rate of toll. The board of county commissioners shall make all needful rules and regulations for the government and operation of county ferries, alter and fix rates of toll, and fix the amount of rental when leased to individuals or companies; and in all cases the rate of toll shall be printed in legible form, and posted upon the boat and at the landing-places.

History: En. Sec. 5, Ch. 33, L. 1909;
re-en. Sec. 4481, R. C. M. 1921.

16-1121. (4481.1) Definition of “minerals” and “real property.” As used in this act the word “minerals” means, and shall be construed to include, minerals of every kind, character and description, including oil and gas; and the words “real property” mean, and shall be construed to include, any and all real property acquired by the county by purchase, tax deeds, legal proceedings or however acquired.

History: En. Sec. 1, Ch. 154, L. 1935.

Collateral References

Mines and Minerals—4.
58 C.J.S. Mines and Minerals § 19.

16-1122. (4481.4) Validation of mineral reservations heretofore made by counties. All mineral reservations and all royalty reservations hereto-

fore made by counties in this state in conveyances of real property whether the same are of a less or greater percentage or are different than was authorized or required by law at the time such reservations were made, and all agreements in connection with such reservations, heretofore made, are hereby ratified, confirmed and validated.

History: En. Sec. 4, Ch. 154, L. 1935;
amd. Sec. 1, Ch. 179, L. 1951.

16-1123. (4483) Rewards by county commissioners for apprehension of criminals. The board of county commissioners of each county has the power to offer rewards for the apprehension and conviction of any person or persons who have committed any felony within their respective counties. Said reward shall not exceed the sum of five hundred dollars for the apprehension and conviction of the party or parties guilty of a felony, and the reward shall not be paid in any case until a conviction has first been had in said case. All rewards shall be paid by warrants drawn on the general fund of the county. In no case shall the members of the board of county commissioners, sheriff, or other county officer receiving an annual or monthly salary, be entitled to any part of any such reward.

History: En. Sec. 1, Ch. 61, L. 1909;
re-en. Sec. 4483, R. C. M. 1921.

Operation and Effect

Construing this section authorizing the board of county commissioners to offer rewards for the apprehension and conviction of persons who have committed a felony, held, that by the use of the words,

it was the intention to authorize rewards only after a felony has been committed. *Lewis v. Petroleum County*, 92 M 563, 566, 568, 17 P 2d 60.

Collateral References

Rewards ⇐ 4.
77 C.J.S. Rewards § 8.

16-1124. (4484) Employment of stock inspector by county commissioners. The board of county commissioners of each county, except in counties of the first class, has the power, to employ a stock inspector whenever the board is satisfied from its own knowledge, or from facts and circumstances submitted to it by the county attorney or sheriff, that livestock are being stolen, slaughtered, or otherwise disposed of contrary to law in such county, and in such manner that the public officers of the county are not in position to apprehend the criminals or obtain the necessary evidence upon which to base a prosecution. Whenever such a stock inspector is so employed, the employment shall be only for the case or cases then under investigation, and his compensation shall be at the rate of not to exceed the sum of seven dollars and fifty cents per day and necessary expenses for the time actually engaged in such work, and he shall be paid by a warrant on the general fund of the county, and during the existence of such appointment he shall be vested with the same police power and authority as the sheriff, within the limitation of the purposes for which he is appointed.

Whenever a stock inspector is so employed in the investigation of a crime, and a reward has been offered under the preceding section for the apprehension and conviction of the party or parties guilty of such crime, such inspector shall not be entitled to any part of said reward.

History: En. Sec. 2, Ch. 61, L. 1909;
re-en. Sec. 4484, R. C. M. 1921.

Collateral References

Counties ⇐ 63.
20 C.J.S. Counties § 101.

16-1125. (4485) Secrecy to be maintained regarding employment of stock inspector. The proceedings and meetings of the board of county commissioners relating to the employment of a stock inspector shall not be made public until after the investigation of the crime or crimes by said inspector is completed and any officer who divulges the name of the stock inspector employed, or the purpose of his employment during such period, shall be guilty of a misdemeanor.

History: En. Sec. 3, Ch. 61, L. 1909;
re-en. Sec. 4485, R. C. M. 1921.

16-1126. (4486) Special counsel—acting county attorney. The board of county commissioners has the power, except in counties of the first class, whenever, in its judgment, the ends of justice or the interests of the county require it, to employ, or authorize the county attorney to employ, special counsel to assist in the prosecution of any criminal case pending in such county, or to represent said county in any civil action in which such county is a party. Whenever a vacancy in the office of county attorney shall arise in any county and there is no licensed attorney residing in said county who is eligible to be appointed to fill said vacancy, the board of county commissioners is authorized and has the power to employ special counsel from without the county who shall be designated and officially known as “Acting County Attorney,” and who, during said employment, shall be vested with all the powers and shall perform all the duties of the county attorney, including the filing of all complaints, informations and/or other proceedings for and in which the county or state may be a party, and to prosecute and defend the same to the same extent and with the same force and effect as if he were the regular qualified county attorney. That said attorney shall be paid a monthly compensation of not to exceed the monthly salary of the county attorney. That whenever any such attorney is employed, the county clerk of said county shall certify to the attorney general the name of such acting county attorney and the fact of his employment.

Whenever any licensed attorney shall establish residence in said county and become eligible to hold the office of county attorney, it shall be the duty of the board of county commissioners to appoint such attorney to fill said vacancy and the employment of said special attorney shall thereupon cease.

History: En. Sec. 4, Ch. 61, L. 1909;
re-en. Sec. 4486, R. C. M. 1921; amd. Sec.
1, Ch. 138, L. 1947.

References

Cited in State ex rel. Porter v. District Court, 124 M 249, 220 P 2d 1035, 1046.

Collateral References

District and Prosecuting Attorneys ⇐
3(1).
27 C.J.S. District and Prosecuting Attorneys § 27.

16-1127. (4486.1) Auto passes excluding livestock may be constructed on public roads connecting with fenced state highway. Where a public road or roads connects with a state highway, which state highway is fenced on both sides, the county commissioners, of the county in which said roads are located, may cause to be constructed and maintained thereon extensions of the fence on the sides of the state highway and across the intersecting road leaving in such fences a pass across which must be constructed a passage which will permit the passage of automobiles and trucks but

shall prevent and exclude loose livestock from drifting upon said state highway, and there shall also be maintained in said extensions a gate to permit the passage of livestock, wagons or other vehicles.

History: En. Sec. 1, Ch. 153, L. 1933.

Collateral References

Highways \hookrightarrow 103.

40 C.J.S. Highways § 179.

16-1128. (4486.2) Same—construction on public or county roads—purpose and intent of act. County commissioners may construct, or cause to be constructed under their direction, on public or county roads, passes across which such roads may continue and which shall be so constructed that automobiles and trucks may cross same and which shall be impassable for livestock. Where necessary gates shall also be maintained as provided in section 16-1127; provided, that it is the spirit and intent of the statute, that the discretion granted to boards of county commissioners under this act shall consider primarily the use and benefit of public roads to the general public, provided further, that such passes may be removed by the board of county commissioners, when, in its judgment, the necessity therefor no longer exists.

History: En. Sec. 2, Ch. 153, L. 1933;
amd. Sec. 1, Ch. 33, L. 1955.

Collateral References

Highways \hookrightarrow 103.

39 C.J.S. Highways § 179.

16-1129. (4486.3) Construction of auto pass not to deprive legal fence of character. There may be maintained in a legal fence a pass so constructed that automobiles and trucks may pass over the same and which will prevent the passage of livestock across said opening without depriving such fence of the character of a legal fence under the laws of this state.

History: En. Sec. 3, Ch. 153, L. 1933.

16-1130. (4487) Extension work in agriculture and home economics—county commissioners may appropriate money for. The county commissioners of any county in the state of Montana may appropriate money from the general funds of the county treasury, or from funds provided by special levy, which the said county commissioners are hereby authorized to make at the same time as other levies for county purposes, for the purpose of carrying on extension work in agriculture and home economics within the said county in cooperation with the Montana state college and the United States department of agriculture. The amount of such appropriation in any county, its method of expenditure, the responsibility for the direction of the work, and the procedure of appointing agents, the compensation and conditions of service of such agents, shall be covered in memoranda of agreement between the county commissioners and the Montana state college.

History: En. Sec. 1, Ch. 109, L. 1913;
amd. Sec. 1, Ch. 54, L. 1915; amd. Sec. 1,
Ch. 13, L. 1919; re-en. Sec. 4487, R. C. M.
1921; amd. Sec. 1, Ch. 204, L. 1949.

as a county agent, but section 16-2403, which enumerates who are county officers, makes no mention of an extension agent. *Turnbull v. Brown*, ___ M ___, 273 P 2d 387, 390. (Dissenting opinion, ___ M ___, 273 P 2d 387, 390.)

Extension Agent

The extension agent is not a county officer who, under section 16-2413, must keep his office at the county seat. Not only does the law bringing into existence the extension agent fail to designate him

Collateral References

Counties \hookrightarrow 153½.

20 C.J.S. Counties § 236.

16-1131. (4487.1) Counties authorized to deed land for park to state or United States—reversion of title. The county commissioners of any county in the state of Montana are hereby authorized to convey to the state of Montana or the United States of America any tract of county owned land not exceeding one thousand two hundred eighty acres (1,280), to be used for the establishment and maintenance of a park and to be maintained by the state or federal government as a public park or recreational grounds. Said land shall be deeded to the state or federal government without charge, but upon the condition that the same shall be devoted and maintained by the state or federal government for the purpose specified in this act, and in the event that said land shall cease to be used for such purposes for a period of five (5) years in succession, the title thereto shall revert to the county making such grant.

History: En. Sec. 1, Ch. 139, L. 1935.

Collateral References

Counties \Rightarrow 108.

20 C.J.S. Counties § 172.

16-1132. (4487.2) Exchanging tax deed land for United States land authorized. All real property heretofore or hereafter acquired by any county under tax title, which in the judgment of the board of county commissioners is suitable for the production of trees or as a water shed or for other national forest purposes, may be conveyed by deed to the United States of America by the board of county commissioners in exchange for government land or timber, if in the discretion of the board it is to the advantage and best interests of the county to make such exchange. The board of county commissioners is hereby authorized to accept from the United States of America for and on behalf of the county, as full compensation for such county land so exchanged, title to land or timber of the United States equal in value to the appraised value of the county land so exchanged for the same.

History: En. Sec. 1, Ch. 150, L. 1935.

16-1133. (4487.3) Disposal of timber acquired by counties. The county commissioners are hereby authorized to dispose of any timber acquired from the United States in any exchange, by agreement with the United States department of agriculture that such timber shall be cut and removed by any agency selected by the United States department of agriculture with the understanding that the stumpage payments for timber so cut will be paid over to the county in cash as full compensation for the county land exchanged to the United States, provided that the amounts of such stumpage payments so paid over shall equal the appraised value of the county land exchanged for same, and such cash payments shall be deposited in the county treasury for the use of the county.

History: En. Sec. 2, Ch. 150, L. 1935.

16-1134. (4487.4) Sale of land and timber acquired. All land and all timber not subject to the arrangement authorized in section 16-1133, acquired by the county under the provisions of this act may be sold by the board of county commissioners in the manner provided by law for the sale

of county property and the proceeds of such sale shall be deposited in the county treasury for the use of the county.

History: En. Sec. 3, Ch. 150, L. 1935.

16-1135. (4487.5) Conveyance to United States—effect—notice not required—expenses. The execution by the board of county commissioners of a deed of conveyance to the United States of America of any county land conveyed under this act, shall operate to discharge and cancel all tax levies, tax liens and special assessments of every sort and kind against such land and to convey all of the county's title to such lands at the time of the execution of said deed. No public notice of the intention to convey title to the United States of America to any of the property subject to this act shall be necessary. The board of county commissioners shall have authority to defray all expenses necessarily incident to such exchange.

History: En. Sec. 4, Ch. 150, L. 1935.

16-1136. (4488) County commissioners may erect market houses and establish markets. In addition to the powers specifically granted by the laws of the state of Montana, and such other limitations and exceptions contained in the existing statutes of the state of Montana in reference to the debt-incurring power of boards of county commissioners, the boards of county commissioners in every county in the state of Montana shall have the power to erect market houses, to be located at the county seats of their respective counties, and to establish and regulate markets, and to acquire the property necessary therefor.

History: En. Sec. 1, Ch. 28, L. 1917;
re-en. Sec. 4488, R. C. M. 1921.

20 C.J.S. Counties § 167.

Generally, see 35 Am. Jur. 133, Markets and Marketing.

Collateral References

Counties⇒105(1).

16-1137. (4489) Acquisition of property for establishment and maintenance of public markets. The boards of county commissioners within the state of Montana may, within said period of one year, or at any time thereafter, acquire by purchase, lease, construction, or otherwise, suitable grounds, buildings, and quarters for the establishing, conducting, operating, and maintaining of a public market open to the farmers, gardeners, and actual producers of farm products within their respective counties. The boards of county commissioners of the counties of the state availing themselves of the provisions of this act must, as soon as the lands and premises necessary therefor have been acquired, cause to be opened and maintained, at the county seats of their respective counties, in the quarters so acquired, an open public market for the benefit of the farmers, gardeners, and actual producers of farm products, for the sale by the producers thereof direct to the consumers of butter, eggs, cheese, meats, vegetables, and all other farm products raised or produced for domestic consumption, wherein the producers thereof within each county may display and offer for sale his or her products direct to the consumers thereof within said counties.

History: En. Sec. 2, Ch. 28, L. 1917;
re-en. Sec. 4489, R. C. M. 1921.

Collateral References

Counties⇒103, 105(1).

20 C.J.S. Counties §§ 165, 167.

16-1138. (4490) County auditor or county clerk to act as market-master—powers and duties. In each of the counties of this state wherein the office of county auditor exists the county auditor shall be ex officio the county market-master, and in all counties of this state hereinbefore enumerated, and in all other counties which may avail themselves of the provisions of this act, wherein no office of county auditor is maintained, the county clerk of such county shall be ex officio market-master, and as such market-master shall, under the supervision and approval of the board of county commissioners, make all necessary rules and regulations for the establishment, maintenance, operation, and control of the markets established hereunder in the respective counties of the state; and it shall be the duty of such market-master to cause the market buildings, grounds, and premises to be kept reasonably clean and in proper sanitary condition; to arrange for stalls and spaces in such manner as to best suit the conveniences of both buyers and sellers; to see that the laws in the state of Montana in reference to weights and measures are enforced and observed; to cause order to be preserved during the time such market shall be open and in operation; to prevent and remove obstructions from the market place or grounds; to remove all vagrants, and prevent disorderly conduct, and prevent disorderly persons from loitering in said market buildings, space, or grounds during the market hours; to cause all offenses against the laws of the state of Montana in relation to the inspection of foods, the sale of unclean, unwholesome, damaged, or spoiled meats, farm products, or vegetables, or provisions of any kind, to be prosecuted; to designate proper means of supervising and accounting for the sales therein made, and collecting the commissions hereinafter provided for; and to generally supervise and control the operations of the public markets established under the provisions of this act.

History: En. Sec. 3, Ch. 28, L. 1917;
re-en. Sec. 4490, R. C. M. 1921.

Collateral References
Counties \Rightarrow 107.
20 C.J.S. Counties § 169.

16-1139. (4491) Five per centum of gross sales to be paid to county—county market fund—penalty for refusal to pay. Every producer of products availing himself or herself of the use of the market place established under the provisions of this act shall pay, or cause to be paid, at the close of each day's business, to the market-master thereof, a charge of five per centum of his or her gross sales; and the funds thus collected by the market-master shall be turned into the county treasury of the county to the credit of the county market fund, and shall be used by the county treasurer towards the payment of the expenses of operating and maintaining such public market; and every person, firm, or corporation availing themselves of the privileges provided hereby who shall fail, neglect, or refuse to so pay to the market-master of the county market of any county of this state five per centum of the gross sales by them made within such market shall be guilty of a misdemeanor, and, upon the conviction thereof, shall be fined not less than ten nor more than one hundred dollars, and imprisoned in the county jail until such fine be paid, in the manner provided by law, and shall be forever thereafter disbarred from the privi-

leges afforded by the county markets established at the county seats of every county in the state of Montana.

History: En. Sec. 4, Ch. 28, L. 1917;
re-en. Sec. 4491, R. C. M. 1921.

16-1140. (4492) When market shall be open—publication of rules and regulations and notice of market days. All county markets established under the provisions of this act shall be open to the public not less than two days in each week, and the rules and regulations adopted for the government thereof, together with a notice of the market days in each week shall be published by the county commissioners once in each year in every newspaper printed and published in their respective counties for a period of not less than two successive weeks, the first publication thereof to be made not less than two weeks prior to the opening of the markets established hereunder in each county, and the future annual publications thereof to be made at such time as may be ordered by the boards of county commissioners.

History: En. Sec. 5, Ch. 28, L. 1917;
re-en. Sec. 4492, R. C. M. 1921.

16-1141. (4493) Expense of establishing and maintaining public market—how paid. The expense of the establishment and maintaining of the markets provided for in this act shall be paid by the boards of county commissioners from the general funds of the counties, save and except such portions of the expense of operating and maintaining the same as may be derived from the revenues provided for in this act.

History: En. Sec. 6, Ch. 28, L. 1917;
re-en. Sec. 4493, R. C. M. 1921.

16-1142. (4494) Purchase of products for resale or speculation prohibited. No rules or regulations adopted for the government of any market established under this act shall permit any person, firm, or corporation to purchase the products displayed and offered for sale, for the purpose of speculating thereon by again offering the same for sale within such public market place; and the privileges of the markets established under the provisions of this act shall be extended only to the actual producers of the products offered for sale.

History: En. Sec. 7, Ch. 28, L. 1917;
re-en. Sec. 4494, R. C. M. 1921.

16-1143 to 16-1148. (4495 to 4500) Repealed—Chapter 40, Laws of 1949.

Repeal

These sections (Ch. 96, L. 1917; amd. Ch. 153, L. 1919), relating to extermination of gophers, were repealed as Secs.

4495 to 4500 of the 1935 Revised Code, by Sec. 1, Ch. 40, Laws 1949, effective February 21, 1949. For new law, see secs. 16-1175 to 16-1178.

16-1149. (4501) Destruction of insect pests by county commissioners. The board of commissioners of any county of this state, where there are any insect pests, are hereby authorized and empowered to appoint some suitable person or persons, whose duty it shall be, acting under the direction of the state entomologist, to poison, kill, catch, and exterminate insect pests within such county, and any such person so appointed is hereby empowered and directed to enter upon any farm, railroad right of way, grounds or,

premises infested with such insect pests and poison, kill, catch, and exterminate the insect pests therein.

History: En. Sec. 1, Ch. 227, L. 1921;
re-en. Sec. 4501, R. C. M. 1921.

References

State ex rel. Case v. Bolles et al., 74 M
54, 69, 238 P 586.

16-1150. (4502) Compensation of appointees — manner of payment. Any person so appointed under the provisions of this act shall receive as compensation the sum of not less than two dollars and fifty cents (\$2.50), or more than four dollars (\$4.00) per day for eight hours labor performed in poisoning, killing, catching and exterminating such insect pests exclusive of time going to and returning from such work. Such person shall make a sworn statement to the county of the time put in and the poison or other means used, which said statement shall be attached to the bill or claim against the county, and warrants in payment thereof drawn on the general fund.

History: En. Sec. 2, Ch. 227, L. 1921;
re-en. Sec. 4502, R. C. M. 1921; amd. Sec.
1, Ch. 25, L. 1923.

References

State ex rel. Case v. Bolles et al., 74 M
54, 69, 238 P 586.

16-1151. (4503) Purchase of poison and equipment—manner of payment. The board of county commissioners of any county may, from time to time, purchase such quantities and amounts of poisons, traps and other equipment necessary to carry out the provisions of this act to poison, kill, catch or exterminate such insect pests, and warrants in payment thereof shall be drawn on the general fund.

History: En. Sec. 3, Ch. 227, L. 1921;
re-en. Sec. 4503, R. C. M. 1921; amd. Sec.
2, Ch. 25, L. 1923.

References

State ex rel. Case v. Bolles et al., 74 M
54, 69, 238 P 586.

16-1152. (4504) Tax levy for payment of warrants. The board of county commissioners shall annually determine the amount of such warrants drawn on the general fund for the purposes of this act, and the succeeding year, shall levy a tax for the purpose of insect pest extermination sufficient in amount to reimburse said general fund for the money so paid out on such warrants, which said tax shall be levied upon all the property in the county and shall not exceed one mill on each dollar of assessed valuation. If there be no money in the general fund with which to pay such warrants, they shall be registered and bear interest in the same manner as other county warrants, but in such case the interest shall be computed and added to the amount for which such tax is levied.

History: En. Sec. 4, Ch. 227, L. 1921;
re-en. Sec. 4504, R. C. M. 1921; amd. Sec.
3, Ch. 25, L. 1923.

Collateral References

Counties 192.
20 C.J.S. Counties § 281.

References

State ex rel. Case v. Bolles et al., 74 M
54, 69, 238 P 586.

16-1153. (4505) "Insect pest" defined. The term "insect pest" as used in this act shall include grasshopper, cut-worm, pale western cut-worm, army worm, chinchbug and any other insect generally recognized as a destroyer of grain, hay, and horticultural crops.

History: En. Sec. 5, Ch. 227, L. 1921;
re-en. Sec. 4505, R. C. M. 1921.

16-1154. (4513.3) Lease of county fair grounds and buildings, power of commissioners concerning. Boards of county commissioners are hereby authorized to lease for limited periods of time county fair grounds and buildings thereon on such terms as they shall deem proper. In the event same are leased for entertainment purposes the county commissioners shall collect an amount by them deemed proper but not in excess of twenty per centum (20%) of the gross receipts taken in by lessee. Said property shall not be leased unless the lessee shall give a bond such as the board of county commissioners may deem sufficient. No lease shall be executed to permit the use of said premises during any time within three (3) weeks prior to the holding of a county fair. No lease shall be executed unless the lessee shall agree to furnish adequate police protection over all property so leased. Any lease shall be subject to immediate cancellation by the board of county commissioners in case lessee fails to maintain order or to properly police the grounds; provided nothing herein shall be construed to prevent county commissioners to permit schools to use fair grounds for athletic or other public school purposes.

History: En. Sec. 1, Ch. 11, Ex. L. 1933.

Collateral References

Agriculture⌚5.

3 C.J.S. Agriculture § 14.

16-1155. (4513.4) Disposal of moneys received. All moneys received from the leasing of fair grounds shall be deposited in the poor fund of the county.

History: En. Sec. 2, Ch. 11, Ex. L. 1933.

Collateral References

Social Security and Public Welfare⌚4.

70 C.J.S. Paupers § 19.

16-1156. (4515) Board to provide appliances for holding elections and allow expenses. The board of county commissioners must provide all poll-lists, poll-books, blank returns and certificates, proclamations of elections, and other appropriate and necessary appliances for holding all elections in the county, and allow reasonable charges therefor, and for the transmission and return of the same to the proper officers.

History: En. Sec. 4280, Pol. C. 1895; re-en. Sec. 2939, Rev. C. 1907; re-en. Sec. 4515, R. C. M. 1921. Cal. Pol. C. Sec. 4064.

Collateral References

Elections⌚212, 247, 265.

29 C.J.S. Elections §§ 197, 229, 240.

Cross-Reference

County commissioners to furnish poll-books, sec. 23-701.

16-1157. (4516) Issuance of certificates of election as board of canvassers. Whenever, as canvassers, the board of county commissioners declares the result of any election held in the county, certificates must be by the clerk of the board issued to all persons elected to a county office or to a township or district office therein, and such other certificates must be made out and transmitted as required by the title relative to elections.

History: En. Sec. 4281, Pol. C. 1895; re-en. Sec. 2940, Rev. C. 1907; re-en. Sec. 4516, R. C. M. 1921. Cal. Pol. C. Sec. 4065.

Collateral References

Elections⌚265.

29 C.J.S. Elections § 240.

Cross-Reference

Certification of election, sec. 23-1808.

16-1158. (4517) Power to require attendance of witnesses. The board may, by its chairman or the chairman of any committee, issue subpoenas to compel the attendance of any person and the production of any books or papers relating to the affairs of the county, for the purpose of examination upon any matter within its jurisdiction.

History: En. Sec. 4282, Pol. C. 1895; re-en. Sec. 2941, Rev. C. 1907; re-en. Sec. 4517, R. C. M. 1921. Cal. Pol. C. Sec. 4067.

Collateral References
Elections↪259.
29 C.J.S. Elections § 237.

16-1159. (4518) Examination of witnesses. A witness is bound to attend, when served, and to answer all questions which he would be bound to answer before any court. Disobedience to the subpoena, or to an order to attend or to testify, may be enforced by the board, and for that purpose the board has all the powers conferred by, and the witness is subject to all the provisions of sections 93-1501-3 to 93-1501-15.

History: En. Sec. 4283, Pol. C. 1895; re-en. Sec. 2942, Rev. C. 1907; re-en. Sec. 4518, R. C. M. 1921. Cal. Pol. C. Sec. 4068.

Collateral References
Counties↪47.
20 C.J.S. Counties § 81.

16-1160. (4519) Officers and witnesses not to be prepaid. Neither the officers serving subpoenas nor the witnesses subpoenaed to testify in relation to matters of public concern before the board of county commissioners are entitled to have their fees prepaid, but officers must serve the subpoenas and witnesses must attend without their fees being prepaid. The board must allow the witnesses reasonable compensation for their attendance, but in no case to exceed the amount for like services in courts.

History: En. Sec. 4284, Pol. C. 1895; re-en. Sec. 2943, Rev. C. 1907; re-en. Sec. 4519, R. C. M. 1921. Cal. Pol. C. Sec. 4069.

16-1161. (4520) Liability on official bond of commissioner. Any county commissioner who neglects or refuses to perform any duty imposed on him, without just cause therefor, or who wilfully violates any law provided for his government as such officer, or fraudulently or corruptly performs any duty imposed on him, or wilfully, fraudulently, or corruptly attempts to perform an act, as commissioner, unauthorized by law, in addition to any other penalty provided in this code, forfeits to the county five hundred dollars for every such act, to be recovered on his official bond; and is further liable on his official bond to any person injured thereby for all damages sustained.

History: En. Sec. 4295, Pol. C. 1895; re-en. Sec. 2954, Rev. C. 1907; re-en. Sec. 4520, R. C. M. 1921. Cal. Pol. C. Sec. 4086.

Related sections: 16-812, 16-3103.

Operation and Effect

Section 32-309 places the specific legal duty upon the board of county commissioners to remove obstructions in a highway, and after notice thereof any member of the board who neglects to do so becomes personally liable under this section for any injury caused thereby, and they are not relieved of liability by merely


instructing the road supervisor to erect and maintain barriers; hence an allegation in the complaint of one who has been injured, to the effect that the board had not instructed the supervisor to erect and maintain barriers, is not required to render the pleading sufficient. *Becker v. Chapple et al.*, 72 M 199, 202 et seq., 232 P 538.

Collateral References
Counties↪96.
20 C.J.S. Counties § 156.

16-1162. (4520.1) Employment of persons to administer relief received from federal agencies. In any county where aid is received from the Reconstruction Finance Corporation or any other similar agencies, the county commissioners of such county shall be authorized to employ the necessary help and incur such expenses as are necessary in the administration of such relief, and in so doing the board of county commissioners may appropriate such funds, as are necessary from the general fund of said county and such appropriation shall be held and deemed legal and valid notwithstanding the provisions of the budget act.

History: En. Sec. 1, Ch. 44, L. 1933.

Collateral References

Counties  63.

20 C.J.S. Counties § 101.

16-1163. County commissioners may accept museums, etc. The board of county commissioners of the several counties of the state, in addition to all other powers now conferred upon them, shall have authority to accept or acquire by gift or donation from individuals, associations and corporations, archaeological, geological and historical museums, and collections of exhibits, and articles, matters and things to be included in or added to such museums and collections.

History: En. Sec. 1, Ch. 17, L. 1945.

16-1164. Tax levy for support of museums. The board of county commissioners of any county now owning, or hereafter acquiring any such museum or collection of exhibits, may make an appropriation in its annual budget for the upkeep, care, maintenance, operation and support thereof, and to meet and take care of such appropriation may annually levy a tax of not to exceed one-half ($\frac{1}{2}$) mill on each dollar of the taxable valuation of the property subject to taxation in the county, which levy shall be made at the same time as other levies are made for county and school purposes. The proceeds from the collection of such levy shall be kept in a special fund by the county treasurer and used solely for the purpose for which such levy was made.

History: En. Sec. 2, Ch. 17, L. 1945.

16-1165. Board of trustees for museums—appointment and duties. The board of county commissioners of each county owning, or hereafter acquiring any such museum or collection of exhibits may, at the regular meeting of such board in July, 1945, if the county is then the owner of any such museum or collection, or at the first regular meeting of the board after acquiring any such museum or collection, appoint a board of trustees for such museum or collection, such board to consist of three (3) responsible persons, electors and residents of the county, the term of one of said members to expire on June 30th of the next following year, the term of another of said members to expire on June 30th of the second following year and the term of the third member to expire on June 30th of the third following year; and thereafter the board shall, at its regular meeting in July of each year appoint a member of such board of trustees to take the place of the member whose term expired on June 30th immediately preceding. It shall be the duty of such board to have the immediate custody, charge and control of such museum or collection, to make such rules and regulations as

may be necessary and reasonable for the preservation, upkeep, care, maintenance, operation and support and display thereof, and to make to the board of county commissioners, not later than the 15th day of July of each year, a report in writing, detailing all gifts and donations made to such museum or collection and the receipts and expenditures during the immediately preceding fiscal year, and an estimate of the amount to be budgeted for such museum or collection in the budget of the county for the then current fiscal year.

History: En. Sec. 3, Ch. 17, L. 1945.

16-1166. (2815.1) Public dance regulation—definitions. As used in this act, the term “public dance” shall be construed to mean any dance to which the public generally may gain admission with or without the payment of an admission fee whether said admission fee is paid in the form of club dues, membership fees, or in any other manner. The term “dance hall” shall be construed to mean any room, hall, pavilion, building or other structure kept for the purposes of conducting therein public dances or dancing.

History: En. Sec. 1, Ch. 131, L. 1929.

86 C.J.S. Theaters and Shows § 20.

Collateral References

Theaters and Shows ⇨ 3.

Public regulation of dance halls. 48 ALR 144.

16-1167. (2815.2) License for public dance. No person, co-partnership or corporation shall hold any public dance or conduct or maintain any dance hall without the limits of incorporated cities or towns without having first procured from the board of county commissioners of the county in which it is proposed to conduct such dance or dance hall a license so to do. Temporary license of a period not exceeding thirty days may be issued by the clerk and recorder of the county in which such dance is to be held. Licenses for dance halls shall be issued by the year or by the quarter, as requested by the applicant. A license for a single public dance shall entitle the holder thereof to conduct such dance only on the day and at the place specified in the license. No license to conduct a public dance or dance hall shall be granted unless the applicant therefor be of good moral character. No license shall be granted to any corporation, but if any dance hall be conducted by a corporation the license shall issue to the manager or other directing head thereof.

History: En. Sec. 2, Ch. 131, L. 1929.

Collateral References

Tax or license fee in respect of dancing or other entertainment provided in connection with service of refreshments. 142 ALR 572.

Validity of statutory or other regulation of road houses and places of entertainment outside of incorporated cities and towns. 145 ALR 757.

16-1168. (2815.3) County commissioners to fix dance hall license fees. The board of county commissioners of each county shall, by a general order, from time to time, fix the fees to be charged for licenses granted hereunder, such fees, however, not to be less than five dollars (\$5.00) nor more than twenty-five dollars (\$25.00) for an annual dance hall license, nor less than one dollar (\$1.00) nor more than five dollars (\$5.00) for a license for a single dance. Single dances held by grange, patriotic, fraternal organizations or strictly community dances may be held without a permit. The

county commissioners may issue a permit without charge, for grange, patriotic, fraternal or community dances.

History: En. Sec. 3, Ch. 131, L. 1929.

Collateral References

Theaters and Shows↔3.

86 C.J.S. Theaters and Shows § 28.

16-1169. (2815.4) Immoral or suggestive dancing prohibited—lights required. No immoral, indecent, suggestive or obscene dance shall be given or carried on in any dance hall or any dance licensed hereunder. All buildings, halls, rooms, pavilions or other places in which public dances are carried on, as well as all halls, corridors and rooms leading thereto or connected therewith shall at all times while open to the public, be well lighted.

History: En. Sec. 4, Ch. 131, L. 1929.

Collateral References

Theaters and Shows↔9.

86 C.J.S. Theaters and Shows § 58.

16-1170. (2815.5) Rules and regulations for public dances to be made by county commissioners—officers' duty. The board of county commissioners shall have authority to make all proper and necessary administrative rules and regulations for the purpose of carrying into effect the provisions of this act with respect to the conduct of public dances, and may in its discretion refuse to grant licenses for dance halls to be located at such places or to be conducted at such times as will in their judgment interfere with the comfort and happiness of the community in which such proposed dance hall is to be located.

All peace officers of the state of Montana shall have free access to public dances and dance halls for the purpose of inspection and to enforce compliance with the provisions of this act.

History: En. Sec. 5, Ch. 131, L. 1929.

Collateral References

Theaters and Shows↔1.

86 C.J.S. Theaters and Shows § 3.

16-1171. (2815.6) Application for and issuance of license—display of license required. Applications for licenses hereunder shall be filed with the clerk of the board of county commissioners and be accompanied with a receipt showing the payment to the county treasurer of a license fee. After determining to grant a license to the applicant, the board shall notify the clerk and recorder, who shall issue the license to the applicant. All licenses granted hereunder shall be kept posted in a conspicuous place on the licensed premises.

History: En. Sec. 6, Ch. 131, L. 1929.

Collateral References

Theaters and Shows↔3.

86 C.J.S. Theaters and Shows § 17.

16-1172. (2815.7) Commissioners may revoke license—grounds for revocation. The license of any public dance hall may be forfeited or revoked by the county commissioners for disorderly or immoral conduct on the premises.

History: En. Sec. 7, Ch. 131, L. 1929.

Collateral References

Theaters and Shows↔3.

86 C.J.S. Theaters and Shows § 29.

16-1173. (2815.8) Enforcement of provisions concerning public dances.

The enforcement of the provisions of this act is enjoined upon every officer and official whose duty it is to enforce the laws of the state.

History: En. Sec. 8, Ch. 131, L. 1929.

Collateral References

Theaters and Shows↪2.

86 C.J.S. Theaters and Shows § 58.

16-1174. (2815.9) Violations and penalty. Any person violating any of the provisions of this act shall be deemed guilty of a misdemeanor and upon conviction thereof shall be punished by a fine in any sum not exceeding one hundred dollars (\$100.00) or by imprisonment for a term not exceeding thirty (30) days or by both such fine and imprisonment.

History: En. Sec. 9, Ch. 131, L. 1929.

Collateral References

Theaters and Shows↪8.

86 C.J.S. Theaters and Shows § 16.

16-1175. Control of noxious rodents—cooperation. The boards of county commissioners of the state of Montana are hereby authorized and directed to cooperate with the Montana livestock commission and the United States department of the interior, fish and wildlife service, in the control and destruction of noxious rodents and related animals, such as jackrabbits, prairie dogs, ground squirrels, pocket gophers, rats, mice and other rodents and related animals that are injurious to agriculture, other industries, and the public health in accordance with organized and systematic plans of the fish and wildlife service covering the methods and procedures to be followed in the control and destruction of such noxious rodents and related animals; and for this purpose to enter into written agreements with the Montana livestock commission and with the fish and wildlife service, covering the methods and procedure to be followed in the control and destruction of such noxious rodents and related animals, the extent of supervision to be exercised by either or both the board of county commissioners and the fish and wildlife service, and the use and expenditures of funds hereinafter appropriated. Provided that the boards of county commissioners, in cooperation with the Montana livestock commission and the fish and wildlife service, are authorized also to enter into cooperative agreements with other governmental agencies, counties, associations, corporations, or individuals when such cooperation is deemed to be necessary to promote the control and destruction of noxious rodents and related animals.

History: En. Sec. 1, Ch. 122, L. 1949.

Collateral References**Cross-Reference**

Control by livestock commission, secs.
3-2701 to 3-2704.

Agriculture↪9.

3 C.J.S. Agriculture § 30.

16-1176. Expenditures for supplies and services. In order to perform such rodent control work, the boards of county commissioners are authorized to make necessary expenditures from the county rodent control fund hereinafter established for equipment, materials, supplies, and other expenses, including expenditures for personal services, as may be necessary to execute the functions imposed upon them by this act.

History: En. Sec. 2, Ch. 122, L. 1949.

16-1177. Appropriation authorized—county rodent control fund—tax levy. The board of county commissioners are authorized to appropriate from the county general fund not in excess of ten thousand dollars (\$10,000.00) annually, and transfer same to the county rodent control fund, and/or to levy a tax of not to exceed two (2) mills on the taxable valuation of all agricultural, horticultural, grazing and timber lands, and their improvements. Said tax shall be collected as other county taxes and credited to the county rodent control fund.

History: En. Sec. 3, Ch. 122, L. 1949.

16-1178. Purchase of supplies for cooperators—receipts from supplies—fund established. In addition to the expenditures hereinbefore authorized the boards of county commissioners are authorized to purchase rodent control supplies, including rodent baits for the use of cooperating governmental agencies, counties, associations, corporations, or individuals in the control of noxious rodents and related animals, and to make these supplies and baits available to such cooperators at approximate cost. The receipts from the sale of such supplies and rodent baits shall be credited to a "county rodent control fund," which fund is hereby established, and said fund shall be made permanently available and is hereby appropriated for expenditure by the boards of county commissioners in the same manner as herein provided in section 16-1176.

History: En. Sec. 4, Ch. 122, L. 1949.

16-1179. County-owned civic center, youth center, recreation center—tax levy for maintenance and operation. The board of county commissioners, after a county-owned civic center, youth center, recreation center, or any combination of two or more thereof has been established, may annually levy on the taxable property of the county, in the same manner and at the same time as other county taxes are levied, a special tax not to exceed one (1) mill on each dollar of the taxable valuation for any one (1) year, for the purpose of maintaining and operating such county-owned civic center, youth center, recreation center, or any combination of two or more thereof. All laws applicable to the collection of county taxes shall apply to the collection of the tax herein provided. All funds derived from such tax together with all revenue and income from such civic center, youth center, recreation center, or any combination of two or more thereof shall constitute a separate fund, called the civic-youth-recreation center fund, shall be deposited with the county treasurer, and shall not be used for any purposes except those of such civic center, youth center, recreation center, or any combination of two or more thereof. All claims against such separate fund shall be presented and acted upon in the same manner as are all other claims against the county.

History: En. Sec. 1, Ch. 45, L. 1955.

CHAPTER 12

COUNTY PRINTING—COMMISSIONERS TO CONTRACT FOR

- Section 16-1201. County commissioners to contract for county printing.
16-1202. Official publications and legal advertising.
16-1203. Envelopes.

- 16-1204. Letterheads.
- 16-1205. Legal blanks.
- 16-1206. General office forms, original only.
- 16-1207. General forms, receipts and requisitions in duplicate or more copies.
- 16-1208. Tax receipts, in quintuple and more or less copies.
- 16-1209. Assessment lists.
- 16-1210. Imprinting corner card on government stamped envelopes and printing post cards, stock furnished.
- 16-1211. Index cards, class B, grade 800.
- 16-1212. Special ruled and printed forms.
- 16-1213. Bound books.
- 16-1214. Size 18x11½ record books only.
- 16-1215. County school warrants.
- 16-1216. Election supplies and ballots.
- 16-1217. Stock forms without county name.
- 16-1218. "Substance" and "grade number" defined.
- 16-1219. Bids, how made—other prices.
- 16-1220. Contractor's bond—subletting.
- 16-1221. Prices include what.
- 16-1222. Exception as to county fair printing.
- 16-1223. Penalty.
- 16-1224. Legal status of newspapers suspended by war emergency—time specified for resumption of publication.

16-1201. County commissioners to contract for county printing. It is hereby made the duty of the county commissioners of the several counties of the state of Montana to contract with some newspaper, printed and published at least once a week, and of general bona fide and paid circulation with second class mailing privilege, printed and published within the county, and having been printed and published continuously in such county at least twelve (12) months immediately preceding the awarding of such contract, to do and perform all the printing for which said counties may be chargeable, including all legal advertising required by law to be made, blanks, blank books, election supplies, loose leaf forms, official publications, and all other printed forms required for the use of such counties at not more than the prices specified in sections 16-1202 to 16-1217 inclusive.

History: En. Sec. 1, Ch. 118, L. 1937; amd. Sec. 1, Ch. 127, L. 1949; amd. Sec. 1, Ch. 138, L. 1951.

NOTE.—Earlier acts relating to county printing were Sec. 4233, Pol. C. 1895; re-en. Sec. 2897, Rev. C. 1907; amd. Sec. 1, Ch. 71, L. 1917; re-en. Sec. 4482, R. C. M. 1921; amd. Sec. 1, Ch. 10, L. 1929; re-en. Sec. 4482, R. C. M. 1935; Rep. Sec. 24, Ch. 118, L. 1937.

Rates Fixed by Statute Controlling Where Exceeded by Contract Price

The provisions of this act relating to the maximum rates chargeable under a contract for county printing automatically become a part thereof; hence, even if the

contract price were to exceed the statutory rates, the latter are controlling, and where intended by the commissioners and successful bidder that the contract strictly conform to law, a pamphlet attached to the contract erroneously stated the law, it did not void the contract, having served no purpose. *Shelley v. Normile*, 109 M 117, 123, 124, 94 P 2d 206.

Collateral References

Counties 113(4); Newspapers 2.
20 C.J.S. Counties § 179; 66 C.J.S. Newspapers § 15.

Public contracts generally, see 43 Am. Jur. 737, Public Works and Contracts.

16-1202. Official publications and legal advertising. For every folio or fraction thereof, not more than two dollars (\$2.00) shall be paid for the first insertion thereof, and not more than ninety cents (90c) per folio for each subsequent insertion thereof, required by law to be made. For rule and figure work, not more than three dollars (\$3.00) per folio or fraction

thereof, for the first insertion, and not more than ninety cents (90c) per folio for each subsequent insertion thereof, required by law to be made.

That for the purpose of establishing a basis of folio measurement, one standard newspaper column, when set in the following mentioned type size, shall constitute a folio: 12 lines of solid six point, or approximately one hundred words; fourteen lines of solid seven point, or approximately one hundred words; fifteen lines of solid eight point, or approximately one hundred words; seventeen lines of solid nine point, or approximately one hundred words; eighteen lines of solid ten point, or approximately one hundred words.

For the purpose of determining the different sizes of type hereinbefore mentioned, the following point system measurements as universally used by the graphic arts industries shall prevail: Computing seventy-two points to a linear column inch, there shall be twelve lines of solid six point; 10.285 lines of solid seven point; nine lines of solid eight point; eight lines of solid nine point; 7.2 lines of solid ten point to each column inch.

For rule and figure work the basis for determination of this style shall be not less than two justifications.

History: En. Sec. 2, Ch. 118, L. 1937; amd. Sec. 1, Ch. 127, L. 1949; amd. Sec. 1, Ch. 138, L. 1951.

Collateral References

Newspapers 5(2).
66 C.J.S. Newspapers § 20.

16-1203. Envelopes.

	500	1000	Addl. 1000
White Wove 6¾-24 Grade 350	\$ 6.00	\$ 9.20	\$ 6.25
6¾-28 Grade 400	6.35	9.85	6.90
10-24 Grade 500	7.00	11.10	8.25
10-28 Grade 600	7.60	12.40	9.50
White Bond 6¾-20 Grade 350	6.00	9.20	6.25
10-20 Grade 500	6.35	9.85	6.90
Manila or Kraft 6¾-20 Grade 250	4.90	7.00	4.10
10-28 Grade 500	7.00	11.10	8.25
12-28 Grade 700	8.25	13.70	10.80

History: En. Sec. 3, Ch. 118, L. 1937; amd. Sec. 1, Ch. 250, L. 1947; amd. Sec. 1, Ch. 127, L. 1949; re-en. Sec. 1, Ch. 138, L. 1951.

Compiler's Note

The 1949 law repealed the 1947 amendment of this section. See the repeal section under 16-1223.

16-1204. Letterheads.

	250	500	1000	Addl. 1000
8½ x 7-16 or 20, Grade 27½	\$ 8.45	\$ 9.70	\$12.15	\$ 4.65
8½ x 7-16 or 20, Grade 40	8.75	10.30	13.35	5.85
8½ x 11-16 or 20, Grade 27½	8.75	10.30	13.35	5.85
8½ x 11-16 or 20, Grade 40	9.15	11.10	14.95	7.45

History: En. Sec. 4, Ch. 118, L. 1937; amd. Sec. 2, Ch. 250, L. 1947; amd. Sec. 1, Ch. 127, L. 1949; re-en. Sec. 1, Ch. 138, L. 1951.

Compiler's Note

The 1949 law repealed the 1947 amendment of this section. See the repeal section under 16-1223.

16-1205. Legal blanks.

	250	500	1000	Addl. 1000
7 x 8½, printed one side	\$ 9.25	\$10.90	\$14.45	\$ 6.70
7 x 8½, printed two sides	17.00	19.25	23.85	8.80
8½ x 14, printed one side	11.55	14.40	20.35	11.50
8½ x 14, printed two sides	20.00	23.50	30.60	13.65
8½ x 28, printed one side	21.70	28.10	40.65	24.75
8½ x 28, printed two sides	36.55	43.80	57.70	27.45

History: En. Sec. 5, Ch. 118, L. 1937;
amd. Sec. 1, Ch. 127, L. 1949; re-en. Sec.
1, Ch. 138, L. 1951.

16-1206. General office forms, original only. Printed one or two sides, padded or loose. Actual cost of paper per ream pound indicates the grade number listed herewith. Grade numbers cover either 13, 16, or 20 pound substance paper.

	250	500	1000	Addl. 1000
Size 4¾ x 8½				
1 side, Grade 20	\$ 9.90	\$10.75	\$12.30	\$ 3.65
1 side, Grade 30	10.05	11.10	13.10	4.55
1 side, Grade 40	10.25	11.40	13.60	5.30
Different form other side add	7.15	7.70	8.90	.70

	250	500	1000	Addl. 1000
Size 5½ x 8½				
1 side, Grade 20	\$11.10	\$12.00	\$13.80	\$ 4.15
1 side, Grade 30	11.25	12.35	14.45	4.90
1 side, Grade 40	11.40	12.65	15.10	5.70
Different other side add	7.85	8.45	9.60	.80

	250	500	1000	Addl. 1000
Size 6 x 9½-7¼ x 8½				
1 side, Grade 20	\$13.15	\$14.25	\$16.20	\$ 4.60
1 side, Grade 30	13.35	14.65	17.05	5.50
1 side, Grade 40	13.60	15.05	17.85	6.55
Different other side add	9.10	9.70	10.85	.80

	250	500	1000	Addl. 1000
Size 7 x 10-8½ x 9¼				
1 side, Grade 22½	\$15.55	\$16.85	\$19.25	\$ 5.50
1 side, Grade 27½	15.70	17.10	19.75	6.25
1 side, Grade 40	16.05	17.80	21.15	7.85
Different other side add	10.70	11.30	12.45	.80

	250	500	1000	Addl. 1000
Size $8\frac{1}{2} \times 11-6\frac{3}{4} \times 14$				
1 side, Grade $22\frac{1}{2}$	\$17.90	\$19.95	\$22.70	\$ 6.50
1 side, Grade $27\frac{1}{2}$	18.05	20.25	23.35	7.25
1 side, Grade 40	18.45	21.05	24.95	9.20
Different other side add	12.90	13.50	14.75	.95
	250	500	1000	Addl. 1000
Size $8\frac{1}{2} \times 14$ or $9\frac{1}{2} \times 12$				
1 side, Grade $22\frac{1}{2}$	\$21.85	\$23.60	\$26.70	\$ 7.35
1 side, Grade $27\frac{1}{2}$	22.05	23.90	27.50	8.40
1 side, Grade 40	22.60	24.95	29.55	10.85
Different other side add	15.10	15.70	16.90	1.10
	250	500	1000	Addl. 1000
Size 8×19 or $11\frac{1}{4} \times 14$				
1 side, Grade $22\frac{1}{2}$	\$27.25	\$29.45	\$33.60	\$ 9.65
1 side, Grade $27\frac{1}{2}$	27.50	29.95	34.70	11.00
1 side, Grade 40	28.20	31.35	37.40	14.30
Different other side add	18.60	19.35	20.80	1.30
	250	500	1000	Addl. 1000
Size 11×17 or $7\frac{1}{2} \times 24$				
1 side, Grade $22\frac{1}{2}$	\$32.00	\$34.25	\$38.55	\$10.10
1 side, Grade $27\frac{1}{2}$	32.35	34.90	39.80	11.55
1 side, Grade 40	33.15	36.50	43.05	15.50
Different other side add	21.80	22.60	24.05	1.30
	250	500	1000	Addl. 1000
Size 12×19 or 14×17				
1 side, Grade $22\frac{1}{2}$	\$41.15	\$43.80	\$48.85	\$12.10
1 side, Grade $27\frac{1}{2}$	41.55	44.60	50.50	14.10
1 side, Grade 40	42.60	46.65	54.60	18.95
Different other side add	28.05	28.85	30.30	1.30
	250	500	1000	Addl. 1000
Size 17×22 or 11×34				
1 side, Grade $22\frac{1}{2}$	\$42.20	\$45.90	\$53.10	\$17.05
1 side, Grade $27\frac{1}{2}$	42.85	47.20	55.65	20.15
1 side, Grade 40	44.45	50.40	62.10	27.85
Different other side add	27.45	28.25	29.70	2.05

	250	500	1000	Addl. 1000
Size 19 x 24 or 12 x 38				
1 side, Grade 22½	\$53.60	\$57.90	\$66.40	\$20.35
1 side, Grade 27½	54.35	59.45	69.55	24.05
1 side, Grade 40	56.35	63.40	77.40	33.50
Different other side add	35.00	35.75	37.20	2.60

	250	500	1000	Addl. 1000
Size 17 x 28 or 14 x 34				
1 side, Grade 22½	\$53.90	\$58.40	\$67.45	\$21.40
1 side, Grade 27½	54.70	60.05	70.70	25.40
1 side, Grade 40	56.75	64.15	78.90	35.20
Different other side add	35.50	36.25	37.75	3.35

History: En. Sec. 6, Ch. 118, L. 1937;
amd. Sec. 3, Ch. 250, L. 1947; amd. Sec. 1,
Ch. 127, L. 1949; re-en. Sec. 1, Ch. 138, L.
1951.

Compiler's Note

The 1949 law repealed the 1947 amend-
ment of this section. See the repeal sec-
tion under 16-1223.

16-1207. General forms, receipts and requisitions in duplicate or more copies. Actual cost of paper per pound for both original and duplicate copies as indicated by the grade numbers listed herewith. Grade numbers cover either 13, 16 or 20 substance paper, perforated, gathered, numbered and padded.

	250	500	1000	Addl. 1000
Size 3½ x 8½ or less, 1 side only				
Original and Duplicate,				
Grade 60	\$11.90	\$14.40	\$19.20	\$ 8.25
Grade 80	12.15	14.95	20.35	9.35
Grade 100	12.25	15.20	20.70	9.80
Triplicate or more, and for each addi- tional blank, Grade 30	1.20	2.25	4.10	2.70
Bound 50 sets to book in tag or marble- board cover	1.10	1.80	3.20	2.90
If original printed both sides, add	9.00	9.70	10.95	.70
If original and duplicate printed both sides, add	9.70	10.95	10.60	1.05

	250	500	1000	Addl. 1000
Size 5½ x 8½, 1 side only				
Original and Duplicate,				
Grade 60	\$14.65	\$17.65	\$21.60	\$10.60
Grade 80	14.90	18.20	23.25	12.35
Grade 100	15.20	18.75	24.40	13.50
For each additional blank, add Grade 30	1.50	2.70	5.05	3.75

Bound 50 sets to book in tag or marble board cover	1.40	2.10	3.40	3.30
If original printed both sides, add	11.40	12.05	13.30	.70
If original and duplicate printed both sides, add	12.05	13.30	13.95	1.15
				Addl.
	250	500	1000	1000
Sizes over $5\frac{1}{2} \times 8\frac{1}{2}$, but not over 7×11 , 1 side only				
Original and Duplicate,				
Grade 60	\$20.15	\$23.70	\$30.65	\$13.00
Grade 80	20.55	24.70	32.55	14.85
Grade 100	21.05	25.65	34.50	16.80
For each additional blank, add Grade 30	1.90	3.50	6.55	5.35
Bound 50 sets to book in tag or marble-board cover	1.45	2.20	3.60	3.30
If original printed both sides add	11.80	12.45	13.70	.80
If original and duplicate printed both sides, add	12.45	13.70	14.45	1.20
				Addl.
	250	500	1000	1000
Sizes over 7×11 , but not over $8\frac{1}{2} \times 11$, 1 side only				
Original and Duplicate,				
Grade 60	\$23.60	\$27.60	\$35.55	\$14.35
Grade 80	24.15	28.75	37.80	16.65
Grade 100	24.75	29.90	40.05	18.90
For each additional blank, add Grade 30	2.05	3.85	7.15	5.85
Bound 50 sets to book in tag or marble-board cover	1.55	2.40	3.85	3.60
If original printed both sides add	14.20	14.85	16.25	.80
If original and duplicate printed both sides, add	14.85	16.25	16.90	1.26
				Addl.
	250	500	1000	1000
Sizes over $8\frac{1}{2} \times 11$, but not over $8\frac{1}{2} \times 14$, 1 side only				
Original and Duplicate,				
Grade 60	\$27.70	\$32.35	\$41.25	\$16.70
Grade 80	28.45	33.80	44.15	19.60
Grade 100	29.15	35.25	47.00	22.50
For each additional blank, add Grade 30	2.35	4.35	8.20	6.90

Bound 50 sets to book in tag or marble-board cover	1.65	2.65	4.30	4.05
If original printed both sides add	16.60	17.25	18.60	.80
If original and duplicate printed both sides, add	17.25	18.60	19.25	1.30
	250	500	1000	Addl. 1000
Sizes over 8½ x 14, but not over 7¼ x 17, 1 side only				
Original and Duplicate,				
Grade 60	\$29.35	\$34.50	\$44.40	\$17.00
Grade 80	30.15	36.00	47.40	20.00
Grade 100	30.85	37.50	50.40	23.10
For each additional blank, add Grade 30	2.50	4.50	8.50	7.20
Bound 50 sets to book in tag or marble-board cover	2.20	3.75	6.50	6.25
If original printed both sides add	17.80	18.60	20.15	.90
If original and duplicate printed both sides, add	18.60	20.15	21.00	1.50
	250	500	1000	Addl. 1000
Sizes over 7¼ x 17, but not over 11 x 17, 1 side only				
Original and Duplicate,				
Grade 60	\$39.95	\$46.10	\$58.10	\$23.00
Grade 80	41.05	48.35	62.65	27.50
Grade 100	42.20	50.60	67.15	32.05
For each additional blank, add Grade 30	3.30	6.05	11.35	10.10
Bound 50 sets to book in tag or marble-board cover	2.40	4.20	7.35	7.15
If original printed both sides add	24.00	24.85	26.45	1.20
If original and duplicate printed both sides, add	24.85	26.45	27.66	2.35
History: En. Sec. 7, Ch. 118, L. 1937; amd. Sec. 4, Ch. 250, L. 1947; amd. Sec. 1, Ch. 127, L. 1949; re-en. Sec. 1, Ch. 138, L. 1951.	Compiler's Note The 1949 law repealed the 1947 amendment of this section. See the repeal section under 16-1223.			

16-1208. Tax receipts in quintuple and more or less copies. Perforated, gathered, numbered, different color paper for each sheet, bound in book of 50 sets each complete.

	500 or Less	1000	2000	3000	Addl. 1000
Size 8½ x 11	\$52.40	\$77.45	\$128.85	\$176.60	\$50.10
If additional sheet add	3.75	6.85	11.85	16.85	5.00
Add for extra color	3.10	6.95	9.10	12.20	3.10

If statement printed on other side

add	4.60	8.75	11.85	15.00	3.10
Size $9\frac{1}{4} \times 11\frac{7}{8}$ or $8\frac{1}{2} \times 14$	61.10	89.10	145.55	201.45	56.00
If additional sheet add	5.00	8.10	13.10	18.75	5.95
Add for extra color	3.75	6.55	9.70	12.80	3.10
If statement printed on other side					
add	6.25	9.40	12.50	15.60	3.10
Size $10\frac{3}{4} \times 16\frac{3}{4}$ or 11×17	79.90	114.05	184.20	252.65	68.45
If additional sheet add	6.55	10.55	16.50	24.75	7.40
Add for extra color	4.40	7.20	10.30	12.90	3.75
If statement printed on back add	6.90	10.00	12.60	16.25	3.75

To ascertain price on more than five (5) copies (quintuple) add for each additional sheet: for less than five (5) copies, deduct for each sheet at rate set forth above for sizes specified.

History: En. Sec. 8, Ch. 118, L. 1937; amd. Sec. 5, Ch. 250, L. 1947; amd. Sec. 1, Ch. 127, L. 1949; re-en. Sec. 1, Ch. 138, L. 1951.

Compiler's Note

The 1949 law repealed the 1947 amendment of this section. See the repeal section under 16-1223.

16-1209. Assessment lists.

Printed 1 or 2 sides

	1000	2000	3000	Addl. 1000
Size $8\frac{1}{2} \times 14$ in duplicate, gathered, padded, perforated	\$65.05	\$ 91.35	\$117.35	\$27.55
If original only, padded	48.40	56.55	64.70	8.25
Bound in books of 50 or 75 sets add	6.60	9.90	13.20	3.30
Size $8\frac{3}{4} \times 15$ to $9\frac{1}{2} \times 16\frac{1}{2}$ or $9\frac{1}{2} \times 17$ in duplicate	74.15	104.05	133.40	28.05
If original only, padded	56.00	65.05	73.80	10.25
If bound in books of 50 or 75 sets add	7.60	12.65	17.05	5.00
Size 14×17 in duplicate	79.30	127.70	163.05	33.75
If original only, padded	68.20	78.10	88.25	10.45
If bound in books of 50 or 75 sets add	8.80	14.55	18.15	6.05

History: En. Sec. 9, Ch. 118, L. 1937; amd. Sec. 6, Ch. 250, L. 1947; amd. Sec. 1, Ch. 127, L. 1949; re-en. Sec. 1, Ch. 138, L. 1951.

Compiler's Note

The 1949 law repealed the 1947 amendment of this section. See the repeal section under 16-1223.

16-1210. Imprinting corner card on government stamped envelopes and printing post cards, stock furnished.

	500	1000	2000	3000	Addl. 1000
Envelopes	\$3.00	\$ 4.50	\$ 7.50	\$10.50	\$3.00
Post cards, 1 side printed	4.15	5.25	7.50	9.75	3.00
Both sides printed	7.90	10.15	14.65	19.15	4.50

History: En. Sec. 10, Ch. 118, L. 1937; amd. Sec. 1, Ch. 127, L. 1949; re-en. Sec. 1, Ch. 138, L. 1951.

16-1211. Index cards, class B, grade 800.

	500	1000	Addl. 1000
3 x 5 one side	\$ 9.35	\$11.95	\$ 4.70
Same form, both sides	10.95	14.45	6.20
Different forms, each side	16.85	20.25	6.20
4 x 6 one side	11.60	15.05	6.45
Same form, both sides	13.20	17.60	8.05
Different forms, each side	20.05	24.50	8.05
5 x 8 one side	14.15	18.85	9.20
Same form, both sides	15.75	21.40	10.80
Different forms, each side	23.90	29.60	10.80

History: En. Sec. 11, Ch. 118, L. 1937;
amd. Sec. 7, Ch. 250, L. 1947; amd. Sec. 1,
Ch. 127, L. 1949; re-en. Sec. 1, Ch. 138, L.
1951.

Compiler's Note

The 1949 law repealed the 1947 amend-
ment of this section. See the repeal sec-
tion under 16-1223.

16-1212. Special ruled and printed forms. Prices apply to both sides ruled different with deductions for ruling and printing the same both sides or ruled and printed one side only. Prices include punching for loose leaf holders with rings or posts and green edging of sheets. Numbering of guide lines printed along binding edge of sheet, add one dollar and fifty cents (\$1.50) for each guide line.

8½ x 11 TOTAL OF 8 UNIT COLUMNS, BOTH SIDES

Extra Unit Columns 70 cents each

	250	500	1000	Addl. 1000
Grade 30-28 Sub.	\$ 31.15	\$ 36.70	\$ 46.45	\$ 16.15
Grade 30-32 Sub.	31.40	37.30	47.60	18.80
Grade 60-36 Sub.	33.70	42.05	56.95	28.20
Deduct if both sides alike	5.05	4.95	4.85	.25
Deduct if printed and ruled, 1 side only	7.80	8.60	10.10	2.50

8½ x 14 TOTAL OF 10 UNIT COLUMNS, BOTH SIDES

Extra Unit Columns 70 cents each

	250	500	1000	Addl. 1000
Grade 30-28 Sub.	\$ 36.20	\$ 42.30	\$ 53.30	\$ 20.00
Grade 30-32 Sub.	36.60	42.95	54.65	21.50
Grade 60-36 Sub.	39.50	49.00	66.55	33.40
Deduct if both sides ruled and printed alike	7.35	7.25	7.10	.25
Deduct if ruled and printed, 1 side only	9.35	10.10	11.60	2.80

9¼ x 17 TOTAL OF 12 UNIT COLUMNS, BOTH SIDES

Extra Unit Columns 70 cents each

	250	500	1000	Addl. 1000
Grade 30-28 Sub.	\$ 40.25	\$ 47.65	\$ 61.10	\$ 26.40
Grade 30-32 Sub.	40.80	48.65	63.10	25.95
Grade 60-36 Sub.	45.10	56.95	79.50	44.20
Deduct if both sides ruled and printed alike	7.35	7.25	7.10	.25
Deduct if ruled and printed, 1 side only	9.35	10.10	11.60	2.80

9½ x 12 TOTAL OF 8 UNIT COLUMNS, BOTH SIDES

Extra Unit Columns 70 cents each

	250	500	1000	Addl. 1000
Grade 30-28 Sub.	\$ 32.75	\$ 38.85	\$ 49.85	\$ 19.50
Grade 30-32 Sub.	33.05	39.55	51.25	20.85
Grade 60-36 Sub.	35.95	45.30	62.70	32.40
Deduct if both sides ruled and printed alike	5.55	5.45	5.35	.25
Deduct if ruled and printed, 1 side only	8.10	8.85	10.35	2.50

9½ x 24 TOTAL OF 16 UNIT COLUMNS, BOTH SIDES

Extra Unit Columns 70 cents each

	250	500	1000	Addl. 1000
Grade 30-28 Sub.	\$ 55.00	\$ 64.80	\$ 83.95	\$ 34.75
Grade 30-32 Sub.	55.70	66.25	85.55	37.55
Grade 60-36 Sub.	61.50	77.70	108.50	60.50
Deduct if both sides ruled and printed alike	11.40	11.20	11.00	.25
Deduct if ruled and printed, 1 side only	13.90	14.90	16.90	5.60

10½ x 16 TOTAL OF 12 UNIT COLUMNS, BOTH SIDES

Extra Unit Columns 70 cents each

	250	500	1000	Addl. 1000
Grade 30-28 Sub.	\$ 44.50	\$ 52.70	\$ 67.55	\$ 27.70
Grade 30-32 Sub.	45.10	53.65	69.65	29.80
Grade 60-36 Sub.	49.40	62.15	86.50	43.55
Deduct if both sides ruled and printed alike	8.85	8.75	8.60	.50
Deduct if ruled and printed, 1 side only	10.85	11.85	13.65	2.75

11 x 14 TOTAL OF 10 UNIT COLUMNS, BOTH SIDES

Extra Unit Columns 70 cents each

	250	500	1000	Addl. 1000
Grade 30-28 Sub.	\$ 38.65	\$ 46.10	\$ 59.50	\$ 26.30
Grade 30-32 Sub.	39.20	47.10	61.55	28.25
Grade 60-36 Sub.	43.45	55.40	77.95	44.15
Deduct if both sides ruled and printed alike	6.85	6.75	6.00	.25
Deduct if ruled and printed, 1 side only	8.10	8.85	10.35	2.80

11 x 17 TOTAL OF 12 UNIT COLUMNS, BOTH SIDES

Extra Unit Columns 70 cents each

	250	500	1000	Addl. 1000
Grade 30-28 Sub.	\$ 46.70	\$ 55.00	\$ 70.75	\$ 25.90
Grade 30-32 Sub.	47.30	56.15	73.10	31.80
Grade 60-36 Sub.	51.90	65.50	91.80	50.50
Deduct if both sides ruled and printed alike	9.40	9.30	9.15	.50
Deduct if ruled and printed, 1 side only	11.40	12.40	14.15	3.05

11¼ x 24½ TOTAL OF 16 UNIT COLUMNS, BOTH SIDES

Extra Unit Columns 70 cents each

	250	500	1000	Addl. 1000
Grade 30-28 Sub.	\$ 62.00	\$ 73.30	\$ 94.40	\$ 38.65
Grade 30-32 Sub.	62.95	75.05	97.90	42.10
Grade 60-36 Sub.	69.95	89.15	126.00	70.20
Deduct if both sides ruled and printed alike	12.65	12.50	12.30	.50
Deduct if ruled and printed, 1 side only	14.90	16.15	18.20	3.05

12 x 9½ TOTAL OF 8 UNIT COLUMNS, BOTH SIDES

Extra Unit Columns 70 cents each

	250	500	1000	Addl. 1000
Grade 30-28 Sub.	\$ 31.60	\$ 37.70	\$ 48.65	\$ 19.55
Grade 30-32 Sub.	31.90	38.40	50.10	21.00
Grade 60-36 Sub.	34.60	44.15	61.55	32.45
Deduct if both sides ruled and printed alike	5.35	5.25	5.15	.25
Deduct if ruled and printed, 1 side only	7.85	8.60	10.10	2.55

12 x 19 TOTAL OF 14 UNIT COLUMNS, BOTH SIDES

Extra Unit Columns 70 cents each

	250	500	1000	Addl. 1000
Grade 30-28 Sub.	\$ 52.25	\$ 62.10	\$ 80.05	\$ 33.25
Grade 30-32 Sub.	53.00	63.50	82.85	36.05
Grade 60-36 Sub.	58.75	74.95	105.80	59.00
Deduct if both sides ruled and printed alike	10.90	10.75	10.50	.25
Deduct if ruled and printed, 1 side only	13.40	14.40	16.40	2.80

12 x 23 TOTAL OF 16 UNIT COLUMNS, BOTH SIDES

Extra Unit Columns 70 cents each

	250	500	1000	Addl. 1000
Grade 30-28 Sub.	\$ 61.20	\$ 72.50	\$ 93.30	\$ 38.30
Grade 30-32 Sub.	62.15	74.30	96.85	41.80
Grade 60-36 Sub.	69.20	81.15	124.70	69.65
Deduct if both sides ruled and printed alike	12.45	12.30	12.10	.50
Deduct if ruled and printed, 1 side only	14.40	15.65	17.70	3.05

12 x 28 TOTAL OF 18 UNIT COLUMNS, BOTH SIDES

Extra Unit Columns 70 cents each

	250	500	1000	Addl. 1000
Grade 30-28 Sub.	\$ 78.95	\$ 94.55	\$ 121.75	\$ 50.50
Grade 30-32 Sub.	80.00	96.65	126.00	54.90
Grade 60-36 Sub.	88.70	114.05	160.85	89.65
Deduct if both sides ruled and printed alike	19.25	19.10	18.90	.50
Deduct if ruled and printed, 1 side only	20.10	21.20	24.00	4.75

14 x 17 TOTAL OF 12 UNIT COLUMNS, BOTH SIDES

Extra Unit Columns 70 cents each

	250	500	1000	Addl. 1000
Grade 30-28 Sub.	\$ 51.35	\$ 61.00	\$ 79.00	\$ 33.35
Grade 30-32 Sub.	52.00	62.40	81.90	36.35
Grade 60-36 Sub.	58.10	74.35	105.95	60.05
Deduct if both sides ruled and printed alike	10.65	10.50	10.30	.25
Deduct if ruled and printed, 1 side only	12.20	13.40	15.40	2.80

14 x 22 TOTAL OF 14 UNIT COLUMNS, BOTH SIDES

Extra Unit Columns 70 cents each

	250	500	1000	Addl. 1000
Grade 30-28 Sub.	\$ 64.55	\$ 76.80	\$ 99.95	\$ 44.76
Grade 30-32 Sub.	65.70	78.80	104.05	48.85
Grade 60-36 Sub.	73.75	95.05	136.30	81.10
Deduct if both sides ruled and printed alike	15.00	14.90	14.70	.50
Deduct if ruled and printed, 1 side only	16.20	17.75	20.00	3.75

14 x 34 TOTAL OF 20 UNIT COLUMNS, BOTH SIDES

Extra Unit Columns 70 cents each

	250	500	1000	Addl. 1000
Grade 30-28 Sub.	\$ 93.10	\$109.90	\$141.95	\$ 62.35
Grade 30-32 Sub.	94.60	112.85	147.85	68.15
Grade 60-36 Sub.	106.60	136.55	195.30	115.70
Deduct if both sides ruled and printed alike	22.25	22.10	21.90	.50
Deduct if ruled and printed, 1 side only	23.75	25.25	28.00	4.80

17 x 11 TOTAL OF 8 UNIT COLUMNS, BOTH SIDES

Extra Unit Columns 70 cents each

	250	500	1000	Addl. 1000
Grade 30-28 Sub.	\$ 42.70	\$ 50.40	\$ 66.05	\$ 29.10
Grade 30-32 Sub.	43.40	51.90	68.40	31.45
Grade 60-36 Sub.	48.00	61.20	87.10	50.15
Deduct if both sides ruled and printed alike	8.90	8.80	8.65	.25
Deduct if ruled and printed, 1 side only	10.35	11.35	13.15	2.75

17 x 14 TOTAL OF 10 UNIT COLUMNS, BOTH SIDES

Extra Unit Columns 70 cents each

	250	500	1000	Addl. 1000
Grade 30-28 Sub.	\$ 48.25	\$ 57.80	\$ 75.40	\$ 33.05
Grade 30-32 Sub.	48.90	59.20	78.30	36.05
Grade 60-36 Sub.	54.90	70.70	102.35	59.75
Deduct if both sides ruled and printed alike	10.40	10.25	10.05	.25
Deduct if ruled and printed, 1 side only	11.40	12.40	14.40	2.80

17 x 22 TOTAL OF 14 UNIT COLUMNS, BOTH SIDES

Extra Unit Columns 70 cents each

	250	500	1000	Addl. 1000
Grade 30-28 Sub.	\$ 68.25	\$ 81.50	\$106.85	\$ 49.15
Grade 30-32 Sub.	69.40	83.90	111.55	53.80
Grade 60-36 Sub.	78.80	102.60	149.00	91.25
Deduct if both sides ruled and printed alike	15.70	15.60	15.45	.50
Deduct if ruled and printed, 1 side only	17.70	19.20	21.50	3.75

17 x 28 TOTAL OF 18 UNIT COLUMNS, BOTH SIDES

Extra Unit Columns 70 cents each

	250	500	1000	Addl. 1000
Grade 30-28 Sub.	\$ 85.00	\$103.20	\$135.70	\$ 61.80
Grade 30-32 Sub.	86.35	106.15	141.60	67.60
Grade 60-36 Sub.	98.35	129.85	189.05	115.15
Deduct if both sides ruled and printed alike	20.25	20.10	19.90	.50
Deduct if ruled and printed, 1 side only	21.75	23.25	26.00	4.80

17 x 46 TOTAL OF 28 UNIT COLUMNS, BOTH SIDES

Extra Unit Columns 70 cents each

	250	500	1000	Addl. 1000
Grade 30-28 Sub.	\$134.90	\$168.35	\$224.50	\$ 99.70
Grade 30-32 Sub.	137.20	173.20	231.40	109.20
Grade 60-36 Sub.	157.30	211.85	309.50	186.70
Deduct if both sides ruled and printed alike	33.95	33.60	33.20	.75
Deduct if ruled and printed, 1 side only	33.81	35.31	39.50	7.85

18 x 11½ TOTAL OF 8 UNIT COLUMNS, BOTH SIDES

Extra Unit Columns 70 cents each

	250	500	1000	Addl. 1000
Grade 30-28 Sub.	\$ 47.05	\$ 56.40	\$ 73.25	\$ 31.20
Grade 30-32 Sub.	47.75	57.70	75.85	33.80
Grade 60-36 Sub.	56.65	68.10	96.60	54.50
Deduct if both sides ruled and printed alike	9.65	9.50	9.20	.25
Deduct if ruled and printed, 1 side only	11.65	12.90	14.40	2.80

18 x 23 TOTAL OF 16 UNIT COLUMNS, BOTH SIDES

Extra Unit Columns 70 cents each

	250	500	1000	Addl. 1000
Grade 30-28 Sub.	\$78.70	\$ 95.70	\$125.75	\$ 56.40
Grade 30-32 Sub.	79.90	98.30	131.05	61.60
Grade 60-36 Sub.	90.35	119.05	172.55	103.20
Deduct if both sides ruled and printed alike	19.75	19.60	19.40	.50
Deduct if ruled and printed, 1 side only	20.75	22.25	25.00	4.80

18 x 46 TOTAL OF 32 UNIT COLUMNS, BOTH SIDES

Extra Unit Columns 70 cents each

	250	500	1000	Addl. 1000
Grade 30-28 Sub.	\$141.90	\$174.25	\$230.50	\$106.60
Grade 30-32 Sub.	144.55	179.40	241.55	117.25
Grade 60-36 Sub.	165.00	220.55	324.35	200.45
Deduct if both sides ruled and printed alike	39.75	39.60	39.65	1.00
Deduct if ruled and printed, 1 side only	38.90	40.65	46.15	8.95

19 x 12 TOTAL OF 8 UNIT COLUMNS, BOTH SIDES

Extra Unit Columns 70 cents each

	250	500	1000	Addl. 1000
Grade 30-28 Sub.	\$ 49.15	\$ 58.90	\$ 78.80	\$ 33.25
Grade 30-32 Sub.	49.85	60.30	79.60	36.05
Grade 60-36 Sub.	55.60	71.80	102.60	59.00
Deduct if both sides ruled and printed alike	9.90	9.75	9.45	.25
Deduct if ruled and printed, 1 side only	12.15	13.40	14.90	2.80

19 x 24 TOTAL OF 16 UNIT COLUMNS, BOTH SIDES

Extra Unit Columns 70 cents each

	250	500	1000	Addl. 1000
Grade 30-28 Sub.	\$ 83.00	\$100.90	\$132.85	\$ 60.10
Grade 30-32 Sub.	84.40	103.75	138.50	65.75
Grade 60-36 Sub.	95.90	126.65	184.30	111.35
Deduct if both sides ruled and printed alike	20.00	19.85	19.65	.50
Deduct if ruled and printed, 1 side only	21.25	22.75	25.50	4.80

20 x 14 TOTAL OF 10 UNIT COLUMNS, BOTH SIDES

Extra Unit Columns 70 cents each

	250	500	1000	Addl. 1000
Grade 30-28 Sub.	\$ 57.35	\$ 68.65	\$ 90.10	\$ 40.00
Grade 30-32 Sub.	58.20	70.40	93.60	44.45
Grade 60-36 Sub.	65.05	84.50	121.70	72.55
Deduct if both sides ruled and printed alike	13.45	13.35	13.20	.25
Deduct if ruled and printed, 1 side only	13.65	14.15	16.40	3.80

20 x 28 TOTAL OF 18 COLUMNS, BOTH SIDES

Extra Unit Columns 70 cents each

	250	500	1000	Addl. 1000
Grade 30-28 Sub.	\$ 95.70	\$114.25	\$150.55	\$ 69.85
Grade 30-32 Sub.	97.45	117.80	157.85	76.80
Grade 60-36 Sub.	111.55	145.85	213.70	132.95
Deduct if both sides ruled and printed alike	21.75	21.60	21.40	.50
Deduct if ruled and printed, 1 side only	22.75	24.25	27.00	4.80

History: En. Sec. 12, Ch. 118, L. 1937;
amd. Sec. 8, Ch. 250, L. 1947; amd. Sec. 1,
Ch. 127, L. 1949; re-en. Sec. 1, Ch. 138, L.
1951.

Compiler's Note

The 1949 law repealed the 1947 amend-
ment of this section. See the repeal sec-
tion under 16-1223.

16-1213. Bound books.

Bound books, ruled, printed and paged on 36 Sub. No. 1, 100% rag ledger. Patent back, flat opening. Complete, including lettering back or side title.

The first dimension listed is the binding margin. When greater or intermediate lengths of sheets are furnished with a binding size as listed, the difference between two given lengths is added or subtracted in the correct proportion to either of the given lengths to cover the length of sheet actually furnished. When an intermediate binding size is furnished, the next larger binding size shall be used.

SIZE 10½ x 16—7 UNIT COLUMNS TO PAGE

Extra Unit Columns 70 cents each

No. Pages	300	400	500	560	640
¾ Russia, Printed Head	\$ 63.50	\$ 68.20	\$ 73.10	\$ 75.35	\$ 80.30
¾ Russia, Printed Page	70.90	75.50	80.50	82.80	87.70
Full Russia, Printed Head	73.30	77.95	82.90	85.85	90.20
Full Russia, Printed Page	80.75	85.30	90.35	93.30	97.55

Add for folio printed head \$8.60
 Add for folio printed page \$15.95
 Add for each printed guide line \$1.50
 Add for index ruled \$6.80
 Add for index through book \$2.60

SIZE 11½ x 18—8 UNIT COLUMNS TO PAGE

Extra Unit Columns 70 cents each

No. Pages	300	400	500	560	640
¾ Russia, Printed Head	\$ 69.20	\$ 73.85	\$ 78.95	\$ 81.65	\$ 86.30
¾ Russia, Printed Page	78.20	82.85	87.90	90.65	95.30
Full Russia, Printed Head	78.60	83.20	88.15	91.10	95.35
Full Russia, Printed Page	87.60	92.20	97.10	100.10	103.30

Add for folio printed head \$9.00
 Add for folio printed page \$17.95
 Add for each printed guide line \$1.50
 Add for index ruled \$6.80
 Add for index through book \$2.75

SIZE 12 x 19 OR 14 x 17—8 UNIT COLUMNS TO PAGE

Extra Unit Columns 70 cents each

No. Pages	300	400	500	560	640
¾ Russia, Printed Head	\$ 71.05	\$ 75.85	\$ 80.90	\$ 83.65	\$ 88.30
¾ Russia, Printed Page	81.20	86.00	91.00	93.80	98.45
Full Russia, Printed Head	80.60	85.45	90.50	93.55	97.90
Full Russia, Printed Page	90.70	95.50	100.60	103.70	108.00

Add for folio printed head \$9.35
 Add for folio printed page \$19.50
 Add for each printed guide line \$1.50
 Add for index ruled \$6.80
 Add for index through book \$2.75

SIZE 14 x 8½—5 UNIT COLUMNS TO PAGE

Extra Unit Columns 70 cents each

No. Pages	300	400	500	560	640
¾ Russia, Printed Head	\$ 58.20	\$ 62.75	\$ 68.05	\$ 70.55	\$ 75.10
¾ Russia, Printed Page	68.75	73.25	78.55	81.10	85.50
Full Russia, Printed Head	65.80	70.25	75.50	78.25	82.45
Full Russia, Printed Page	78.40	80.80	86.05	88.80	93.50

Add for folio printed head \$6.60
 Add for folio printed page \$17.50
 Add for each printed guide line \$1.50
 Add for index ruled \$6.80
 Add for index through book \$2.60

SIZE 14 x 20—8 UNIT COLUMNS TO PAGE

Extra Unit Columns 70 cents each

No. Pages	300	400	500	560	640
$\frac{3}{4}$ Russia, Printed Head	\$ 74.35	\$ 79.30	\$ 85.10	\$ 87.60	\$ 93.00
$\frac{3}{4}$ Russia, Printed Page	86.05	91.00	96.80	99.30	104.70
Full Russia, Printed Head	85.50	90.35	95.95	99.05	103.55
Full Russia, Printed Page	97.10	102.00	107.65	110.65	115.30

Add for folio printed head \$9.70

Add for folio printed page \$21.50

Add for each printed guide line \$1.50

Add for index ruled \$7.20

Add for index through book \$2.75

SIZE 16 x 10½—5 UNIT COLUMNS TO PAGE

Extra Unit Columns 70 cents each

No. Pages	300	400	500	560	640
$\frac{3}{4}$ Russia, Printed Head	\$ 64.70	\$ 70.70	\$ 77.45	\$ 80.40	\$ 83.20
$\frac{3}{4}$ Russia, Printed Page	76.45	82.45	89.20	92.20	98.15
Full Russia, Printed Head	74.40	80.35	87.05	91.10	95.95
Full Russia, Printed Page	86.10	92.05	98.75	102.85	107.65

Add for folio printed head \$8.15

Add for folio printed page \$19.90

Add for each printed guide line \$1.50

Add for index ruled \$7.20

Add for index through book \$2.75

SIZE 16 x 21—8 UNIT COLUMNS TO PAGE

Extra Unit Columns 70 cents each

No. Pages	300	400	500	560	640
$\frac{3}{4}$ Russia, Printed Head	\$ 87.00	\$ 94.80	\$103.30	\$107.30	\$115.80
$\frac{3}{4}$ Russia, Printed Page	101.05	108.85	117.35	121.30	129.85
Full Russia, Printed Head	100.45	108.20	116.70	122.90	129.00
Full Russia, Printed Page	114.50	122.20	130.70	136.90	143.05

Add for folio printed head \$10.15

Add for folio printed page \$24.20

Add for each printed guide line \$1.50

Add for index ruled \$7.55

Add for index through book \$2.90

SIZE 17 x 14 OR 19 x 12—6 UNIT COLUMNS TO PAGE

Extra Unit Columns 70 cents each

No. Pages	300	400	500	560	640
$\frac{3}{4}$ Russia, Printed Head	\$ 70.75	\$ 76.80	\$ 83.70	\$ 86.75	\$ 93.60

PRINTING—COMMISSIONERS TO CONTRACT FOR 16-1213

$\frac{3}{4}$ Russia, Printed Page	84.80	90.85	97.75	100.80	107.65
Full Russia, Printed Head	80.15	86.25	93.10	98.15	103.00
Full Russia, Printed Page	94.20	95.25	107.15	112.20	117.05

Add for folio printed head \$9.00
 Add for folio printed page \$23.15
 Add for each printed guide line \$1.50
 Add for index ruled \$7.20
 Add for index through book \$2.75

SIZE 17 x 28—10 UNIT COLUMNS TO PAGE

Extra Unit Columns 70 cents each

No. Pages	300	400	500	560	640
$\frac{3}{4}$ Russia, Printed Head	\$104.15	\$112.55	\$121.75	\$126.00	\$132.10
$\frac{3}{4}$ Russia, Printed Page	121.30	129.70	138.90	143.15	152.30
Full Russia, Printed Head	118.85	127.10	136.50	143.20	149.95
Full Russia, Printed Page	136.00	144.50	153.65	160.40	167.10

Add for folio printed head \$10.90
 Add for folio printed page \$28.10
 Add for each printed guide line \$1.50
 Add for index ruled \$7.55
 Add for index through book \$3.10

SIZE 18 x 11 $\frac{1}{2}$ —5 UNIT COLUMNS TO PAGE

Extra Unit Columns 70 cents each

No. Pages	300	400	500	560	640
$\frac{3}{4}$ Russia, Printed Head	\$69.35	\$ 75.40	\$ 82.30	\$ 84.95	\$ 96.10
$\frac{3}{4}$ Russia, Printed Page	83.00	89.10	95.70	98.60	105.80
Full Russia, Printed Head	78.55	84.55	91.25	96.10	100.90
Full Russia, Printed Page	92.25	98.20	104.90	109.75	114.60

Add for folio printed head \$8.60
 Add for folio printed page \$22.20
 Add for each printed guide line \$1.50
 Add for index ruled \$7.20
 Add for index through book \$2.60

SIZE 18 x 23—8 UNIT COLUMNS TO PAGE

Extra Unit Columns 70 cents each

No. Pages	300	400	500	560	640
$\frac{3}{4}$ Russia, Printed Head	\$ 94.20	\$102.20	\$110.95	\$114.90	\$123.60
$\frac{3}{4}$ Russia, Printed Page	110.75	118.75	127.45	131.40	140.15
Full Russia, Printed Head	109.10	117.00	125.75	132.05	138.30
Full Russia, Printed Page	126.60	133.55	142.25	148.55	154.80

Add for folio printed head \$10.55
 Add for folio printed page \$26.90

Add for each printed guide line \$1.50

Add for index ruled \$7.55

Add for index through book \$3.00

SIZE 19 x 24—8 UNIT COLUMNS TO PAGE

Extra Unit Columns 70 cents each

No. Pages	300	400	500	560	640
$\frac{3}{4}$ Russia, Printed Head	\$ 97.90	\$105.95	\$114.80	\$118.75	\$127.40
$\frac{3}{4}$ Russia, Printed Page	115.40	123.50	132.30	136.75	125.00
Full Russia, Printed Head	112.70	120.85	131.20	136.60	142.45
Full Russia, Printed Page	130.25	138.35	147.20	153.60	159.95

Add for folio printed head \$11.30

Add for folio printed page \$28.85

Add for each printed guide line \$1.50

Add for index ruled \$7.55

Add for index through book \$3.10

SIZE 21 x 16—7 UNIT COLUMNS TO PAGE

Extra Unit Columns 70 cents each

No. Pages	300	400	500	560	640
$\frac{3}{4}$ Russia, Printed Head	\$ 83.40	\$ 91.00	\$ 99.50	\$103.25	\$111.70
$\frac{3}{4}$ Russia, Printed Page	100.15	107.80	116.20	120.05	128.45
Full Russia, Printed Head	96.80	104.30	112.50	118.55	124.55
Full Russia, Printed Page	113.50	121.10	129.35	135.35	141.35

Add for folio printed head \$9.70

Add for folio printed page \$26.50

Add for each printed guide line \$1.50

Add for index ruled \$8.00

Add for index through book \$3.10

Size 28 x 17—7 UNIT COLUMNS TO PAGE

Extra Unit Columns 70 cents each

No. Pages	300	400	500	560	640
$\frac{3}{4}$ Russia, Printed Head	\$ 95.40	\$103.30	\$112.50	\$115.60	\$124.20
$\frac{3}{4}$ Russia, Printed Page	118.80	126.70	135.90	139.00	147.60
Full Russia, Printed Head	110.15	118.20	127.30	130.90	139.85
Full Russia, Printed Page	133.55	141.60	150.70	154.30	163.25

Add for folio printed head \$10.15

Add for folio printed page \$33.60

Add for each printed guide line \$1.50

Add for index ruled \$8.35

Add for index through book \$3.10

History: En. Sec. 13, Ch. 118, L. 1937; Ch. 127, L. 1949; re-en. Sec. 1, Ch. 138, L. amd. Sec. 9, Ch. 250, L. 1947; amd. Sec. 1, 1951.

Compiler's Note

The 1949 law repealed the 1947 amendment of this section. See the repeal section under 16-1223.

References

Shelley v. Normile, 109 M 117, 94 P 2d 206.

16-1214. Size 18 x 11½ record books only.

Loose Leaf Style With Binder

No. Pages	560	640
Marginal record ruled stock form grade 60, 36 Sub. Full		
Russia stock ruled not printed	\$ 55.80	\$ 59.30
Full Russia, Printed Head	62.40	66.10
Full Russia, Printed Page	79.80	79.20

Add for folio printed head \$3.75

Add for folio printed page \$22.20

Add for A-Z index \$6.25

Loose leaf record binders only, full Russia, letter with back

title 7 or 8 quire capacity, each \$ 39.95

History: En. Sec. 14, Ch. 118, L. 1937; amd. Sec. 10, Ch. 250, L. 1947; amd. Sec. 1, Ch. 127, L. 1949; re-en. Sec. 1, Ch. 138, L. 1951.

ment of this section. See the repeal section under 16-1223.

References

Shelley v. Normile, 109 M 117, 123, 94 P 2d 206.

Compiler's Note

The 1949 law repealed the 1947 amend-

16-1215. County school warrants.

	500	1000	Addl. 1000
Warrants with stub, size 4 x 14" on Grade 40 bond or safety paper, single numbered, bound in cardboard covers, or punched for binder	\$ 26.25	\$ 31.75	\$ 10.50

School warrants in triplicate, size 4 x 9¾", Grade 40, 16 Sub. on original and Grade 20, 16 Sub. duplicate, triplicate printed in black and red ink; original black only. Original and duplicate perforated. Bound 50 sets to book\$ 21.50 \$ 28.90 \$ 13.50

County warrants in duplicate or fold-over style, three or more on a sheet, punched for loose leaf binder, perforated, numbered, gathered, Grade 40 bond or safety paper\$ 29.50 \$ 44.25 \$ 27.50

History: En. Sec. 15, Ch. 118, L. 1937; amd. Sec. 11, Ch. 250, L. 1947; amd. Sec. 1, Ch. 127, L. 1949; amd. Sec. 1, Ch. 138, L. 1951.

Compiler's Note

The 1949 law repealed the 1947 amendment of this section. See the repeal section under 16-1223.

16-1216. Election supplies and ballots.

Tally books for primary or general election, each	\$ 1.25
Tally books for judicial candidates, primary elections, each .....	.50
Poll books for primary or general election, each	1.25
Envelopes for poll books, 10 x 15 inches, each .....	.35

Envelopes for tally sheets, 10 x 15 inches, each .....		.35
Envelopes for voted ballots, 15 x 18 inches, each .....		.60
Envelopes for unused ballots, 15 x 18 inches, each .....		.60
Envelopes for return of election books, 17 x 22 inches, each .....		.60
Envelopes for precinct registers, 17 x 22 inches, each .....		.60
Envelopes for election returns, 9½ x 4⅛ inches, each .....		.15
Envelopes for absent voter send out or return, 6½ x 9½ or 6 x 9 inches		
200		14.40
	Additional 100	4.00
Envelopes for absent voter return ballots to judges of election, 10 x 15		
inches, each .....		.35
Absent voter record sheets, size 11 x 21, fold-over	100	9.50
	Additional 100	7.50
Official seals 6½ x 5 inches, printed on gummed paper	250	4.50
	500	6.50
Certificates of election, with stub, size 11 x 17, check bound	50	9.00
	100	12.75
		Addl.
	1000	1000
Precinct register sheets, 8½ x 14, special ruled and printed		
both sides, punched, grade 30, 20 sub. bond paper	\$45.00	\$16.75
Precinct register sheets, 14 x 17, special ruled and printed,		
both sides, punched, grade 30, 20 sub. bond paper	63.25	19.75
Covers for precinct register, 8½ x 14, 125 tagboard, front and		
back cover printed and punched, per 30 sets, or less		8.50
Each additional 10 sets		1.50
Covers for precinct register, 14 x 17, 125 tagboard, front and		
back cover printed and punched, per 30 sets, or less		10.50
Each additional 10 sets		1.90
Instructions to voters, 14 x 22 on 100 lb. tagboard	100	22.50
	Additional 100	6.00
List of electors 8¢ per name. This price includes printing up		
to 100 copies of each precinct list on grade 30, 20 lb. bond		
paper.		

BALLOTS

		Addl.
	1000	1000
Ballots, primary election, complete, including numbering, per-		
forating, assembling, rotating and stitching per party	\$54.00	\$39.50
Ballots for judicial candidates, complete, including number-		
ing, perforating and rotating	18.00	10.75
Ballots, initiative and referendum, constitutional amendment,		
complete, including perforating	\$12.50	\$ 7.20
Ballots, general election, complete, including numbering, per-		
forating and rotating	78.00	39.50
Where constitutional amendments, initiative or referendum		
measures appear on general election ballot, add	9.50	3.00

History: En. Sec. 16, Ch. 118, L. 1937; amd. Sec. 12, Ch. 250, L. 1947; amd. Sec. 1, Ch. 127, L. 1949; amd. Sec. 1, Ch. 138, L. 1951.

Compiler's Note

The 1949 law repealed the 1947 amendment of this section. See the repeal section under 16-1223.

16-1217. Stock forms without county name.

Budget form CB-2—per 100	\$ 6.50
Budget form CB-3—per 100	6.50
Budget form CB-4—per 100	6.70
Budget form CB-5—per 100	7.75
Budget form CB-6—per 100	7.75
Budget form CB-7—per 100	18.00
Justice docket, size 320 page, each	\$24.50
Report of justice fees received, size 14 x 17, ruled and printed one side, per 100	7.50
Teachers' registers, six week, each	\$.75
District school budget applications, form 1	100 5.00
Additional 100	4.00
High school budget application sheets	100 6.00
Additional 100	5.00
District school budget record sheets, ruled and printed one side, size 13¾ x 21¾	100 6.00
Additional 100	5.00
School census reports	per 250 6.00
per 500	10.00
Teachers' contracts	per 50 4.00
per 100	5.50
Trustees' annual reports	per 50 6.00
per 100	10.00
Teachers' reports	per 250 7.00
per 500	10.75
Superintendent's or principal's reports	per 100 5.00
Additional 100	4.50

History: En. Sec. 17, Ch. 118, L. 1937; amd. Sec. 13, Ch. 250, L. 1947; amd. Sec. 1, Ch. 127, L. 1949; re-en. Sec. 1, Ch. 138, L. 1951.

Compiler's Note

The 1949 law repealed the 1947 amendment of this section. See the repeal section under 16-1223.

16-1218. "Substance" and "grade number" defined. That for the purpose of defining the meaning of the word "substance," used in connection with paper stock mentioned herein, it is understood that all substance weights are to be computed on the basic size 17 x 22 inches; conforming to the uniform scale of sizes and weights as used by paper manufacturers. The words "grade number" relate to price per pound of paper in ream lots.

History: En. Sec. 18, Ch. 118, L. 1937; amd. Sec. 1, Ch. 127, L. 1949; amd. Sec. 1, Ch. 138, L. 1951.

16-1219. Bids, how made—other prices. Bids may be made either on the entire act, or bids may be made under each section. If each section is bid

upon separately the section must be bid upon in its entirety and not upon individual items in such section.

All other blank books and printing not covered herein shall be furnished at prices not in excess of the prices for such work as set forth in the current Franklin Printing Catalog list.

History: En. Sec. 19, Ch. 118, L. 1937;
amd. Sec. 1, Ch. 127, L. 1949; amd. Sec. 1,
Ch. 138, L. 1951.

Collateral References
Counties⇒118.
20 C.J.S. Counties § 186.

16-1220. Contractor's bond—subletting. The contract shall be let to the newspaper that in the judgment of the county commissioners shall be most suitable for performing said work, provided, that the county commissioners shall require of any contractor to do such county printing, a good and sufficient undertaking in such sum as said commissioners may deem advisable, signed by at least two sufficient sureties, conditioned to the effect that said contractor will faithfully perform all of the conditions of said contract in accordance with this act and the terms of such contract; provided that nothing in this act shall be construed so as to compel the acceptance of unsatisfactory work; also provided, however, that this requirement shall not affect any contract made prior to the passage of this act. Such contract for printing shall extend for a period of not more than two years. All newspapers which may receive any contract for printing under this act and which may not be able to execute any part of such contract shall be required to sublet such contract or portion of contract to some newspaper or printing establishment within the state, which shall do the work under the contract so sublet entirely within the state with Montana labor.

History: En. Sec. 20, Ch. 118, L. 1937;
amd. Sec. 1, Ch. 127, L. 1949; amd. Sec. 1,
Ch. 138, L. 1951.

Collateral References
Counties⇒113(4), 123, 128.
20 C.J.S. Counties §§ 179, 200, 201.

16-1221. Prices include what. All prices set forth herein include paper stock specified, all printing, and work complete and delivered at the court house.

History: En. Sec. 21, Ch. 118, L. 1937;
amd. Sec. 1, Ch. 127, L. 1949; amd. Sec. 1,
Ch. 138, L. 1951.

16-1222. Exception as to county fair printing. None of the provisions of this act shall apply to any printing or advertising that may be required in connection with the holding of county fairs and expositions.

History: En. Sec. 22, Ch. 118, L. 1937;
amd. Sec. 1, Ch. 127, L. 1949; amd. Sec. 1,
Ch. 138, L. 1951.

16-1223. Penalty. That any violation of this act shall be deemed a misdemeanor and punished as such.

History: En. Sec. 23, Ch. 118, L. 1937;
amd. Sec. 1, Ch. 127, L. 1949; amd. Sec. 1,
Ch. 138, L. 1951.

Compiler's Note

Section 2 of Ch. 127, Laws 1949 repealed
Ch. 250 of Laws 1947, which law amended

sections 16-1203, 16-1204, 16-1206 to 16-1209, 16-1211 to 16-1217. The repealing section read as follows: "That Chapter 250 of the laws of the thirtieth legislative assembly of the State of Montana, 1947, and all other acts and parts of acts in conflict herewith are hereby repealed."

16-1224. Legal status of newspapers suspended by war emergency—time specified for resumption of publication. No newspaper which shall have been qualified to contract with boards of county commissioners or which possessed a legal status on December 7, 1941, as provided in section 16-1201, shall lose its qualification so to contract, or its legal status, if it shall suspend, or shall have heretofore suspended publication by reason of conditions arising from the present war emergency; provided, that such newspaper shall resume its issue within six (6) months after peace shall have been concluded with the last of the powers against whom the United States of America has now declared war, and further provided, that such issue shall be resumed by the person who was the owner of such newspaper on December 7, 1941, or his legal successors or assigns.

History: En. Sec. 1, Ch. 31, L. 1943.

CHAPTER 13

COUNTY FARM BUREAUS

- Section 16-1301. Corporations may be organized as county farm bureaus.
16-1302. How bureau shall be incorporated.
16-1303. Certificate fee only to be paid.

16-1301. (4542) Corporations may be organized as county farm bureaus. A corporation to be known as the county farm bureau may be organized in any county, to develop and to carry out a county program of work, in cooperation with various interested groups and agencies, for the advancement of agriculture and home economics, the promotion of better understanding between the citizenship of town and country, and the development of a wholesome community life.

History: En. Sec. 1, Ch. 14, L. 1919;
re-en. Sec. 4542, R. C. M. 1921; amd. Sec.
1, Ch. 171, L. 1949.

Collateral References

Agriculture 4(1).
3 C.J.S. Agriculture §§ 11, 12.
2 Am. Jur. 405, Agriculture, §§ 12 et seq.

16-1302. (4543) How bureau shall be incorporated. Such corporation shall be incorporated in the manner and under the provisions of law applicable to the corporations specified and authorized to be organized under the provisions of sections 15-1401 to 15-1406.

History: En. Sec. 2, Ch. 14, L. 1919;
re-en. Sec. 4543, R. C. M. 1921.

16-1303. (4544) Certificate fee only to be paid. No other fee than the usual certificate fee shall be required to be paid to any county or state officer for filing of such articles of incorporation.

History: En. Sec. 3, Ch. 14, L. 1919;
re-en. Sec. 4544, R. C. M. 1921.

CHAPTER 14

COUNTY FAIRS

- Section 16-1401. County fair commission—appointment—term—qualifications.
 16-1402. Powers of commission—preference in appointments.
 16-1403. Duties of commission.
 16-1404. Organization of commission.
 16-1405. Compensation of members.
 16-1406. Appropriation and tax levy for county fairs.
 16-1407. Disbursement of appropriation—acquisition of lands—appropriation for exhibits at fairs.
 16-1408. Creation of fair districts—notice and hearing.
 16-1409. Board of directors of fair district.
 16-1410. Powers of directors—meetings—officers—records and accounts.
 16-1411. Secretary and treasurer to be appointed—acquisition of property—powers generally of directors.
 16-1412. Budget for district fairs—consideration by county commissioners—tax levy—district fair fund—expenditures.
 16-1413. Ownership of district fair property.
 16-1414. Additions of counties to fair districts.

16-1401. (4545) County fair commission—appointment—term—qualifications. The board of county commissioners of each county of Montana may, at their regular meeting in December in 1927, appoint from the electors of their respective counties, five responsible persons to constitute a county fair commission, three of said members to be appointed for a term of two years, and two for a term of one year, and until their successors are appointed. At the regular meeting in December in each year thereafter, the said board of county commissioners of each county shall appoint members of the said county fair commission to succeed the members whose terms then expire, such appointments to be for a term of two years. Such persons shall be well qualified to perform the duties of organizing and successfully carrying on the county fair.

History: En. Sec. 1, Ch. 67, L. 1903; re-en. Sec. 2927, Rev. C. 1907; amd. Sec. 1, Ch. 131, L. 1917; amd. Sec. 1, Ch. 139, L. 1921; re-en. Sec. 4545, R. C. M. 1921; amd. Sec. 1, Ch. 30, L. 1927; amd. Sec. 1, Ch. 52, L. 1935.

References

Cascade County v. Penwell, 67 F Supp 253.

Collateral References

Agriculture 5.
 3 C.J.S. Agriculture § 14.

16-1402. (4545.1) Powers of commission—preference in appointments. Said county fair commissioners shall have control and operation of the fair and the supervision and management of the fair grounds and also the leasing of buildings and fair grounds and shall return to the fair fund of the county all revenue obtained from the leasing or renting of the same.

In case there is in any county a fair association, horticultural or agricultural society, the board of county commissioners may appoint said fair commission from the members of said fair association, horticultural or agricultural society, giving preference in said appointment to the officers of the said association or societies.

History: En. Sec. 2, Ch. 52, L. 1935.

References

Cascade County v. Penwell, 67 F Supp 253.

Collateral References

Power of county or municipality to exempt from taxation or otherwise aid or subsidize private enterprises conducted for recreational, exhibition, or entertainment purposes. 116 ALR 889.

16-1403. (4546) Duties of commission. Said commission shall do all things necessary to hold a successful county agricultural fair in their respective counties, and shall have charge of all fair grounds and fair property.

History: En. Sec. 4, Ch. 67, L. 1903; re-en. Sec. 2930, Rev. C. 1907; superseded by Sec. 3, Ch. 30, L. 1911; amd. Sec. 2, Ch. 131, L. 1917; re-en. Sec. 4546, R. C. M. 1921.

No Authority To Borrow Money

County fair commissions have no authority to borrow money under this section, but in an action by a bank to recover money lent in which defendant county disclaimed liability, its treasurer having paid warrants out of other county funds

when there was no money in the fair fund, and replaced it with a loan from the bank, held, that the county having obtained the use and benefit of the loan, it in equity and good conscience was required to pay it back, recovery being warranted in an action as for money had and received. First National Bank of Nashua v. Valley County, 112 M 18, 23, 113 P 2d 783.

References

Cascade County v. Penwell, 67 F Supp 253.

16-1404. (4547) Organization of commission. Said commission shall organize by electing one of its members president and one of its members vice-president, and the county treasurer shall be ex-officio the treasurer. The secretary shall be appointed by the commission, and may be a member of the commission; provided, that should he be a member of the commission, then his salary shall be fixed by the commission in lieu of the salary of twenty-five dollars a year, as provided for in this act.

History: En. Sec. 5, Ch. 67, L. 1903; re-en. Sec. 2931, Rev. C. 1907; superseded by Sec. 3, Ch. 30, L. 1911; amd. Sec. 3, Ch. 131, L. 1917; re-en. Sec. 4547, R. C. M. 1921.

References

Cascade County v. Penwell, 67 F Supp 253.

16-1405. (4548) Compensation of members. Each member of the said commission shall receive a salary of twenty-five dollars a year as compensation for his services. In addition thereto, the said commissioner may be allowed his actual and necessary expenses while fulfilling the duties of his office.

History: En. Sec. 3, Ch. 67, L. 1903; re-en. Sec. 2929, Rev. C. 1907; amd. Sec. 4, Ch. 131, L. 1917; re-en. Sec. 4548, R. C. M. 1921.

References

Cascade County v. Penwell, 67 F Supp 253.

16-1406. (4549) Appropriation and tax levy for county fairs. The board of county commissioners of their respective counties may appropriate annually out of the general fund of the county treasury to the county fair commission a sum not to exceed two thousand five hundred dollars (\$2,500.00), to be expended by the county fair commission for the purpose of holding a county fair and/or junior fair, for advertising the products and resources of their county. In addition to the appropriation above provided for, or in lieu thereof, the county commissioners of any county in Montana shall have the power to levy an ad valorem tax of one and one-half (1½) mills or less on each dollar of taxable property in such county, for the purpose of securing, equipping, maintaining and operating a county fair and/or a junior fair, including the purchase of land for such purposes, and the erection of such buildings and other appurtenances as may be necessary; provided, however, that no portion of said appropriation or tax levy shall be expended for horse racing.

History: En. Sec. 2, Ch. 67, L. 1903; re-en. Sec. 2928, Rev. C. 1907; amd. Sec. 5, Ch. 131, L. 1917; re-en. Sec. 4549, R. C. M. 1921; amd. Sec. 1, Ch. 32, L. 1927; amd. Sec. 1, Ch. 176, L. 1947; amd. Sec. 1, Ch. 134, L. 1955.

Delegation of Authority by Fair Commission

Where money has been appropriated to the county fair commission for advertising purposes the fair commission must determine the method and nature of the advertising and cannot delegate that responsi-

bility to a corporation or individual not responsible to the state or county such as a chamber of commerce. *Dickey v. Board of Comms.*, 121 M 223, 191 P 2d 315, 316.

References

Cascade County v. Penwell, 67 F Supp 253.

Collateral References

Agriculture 5; *Counties* 192.
3 C.J.S. *Agriculture* § 14; 20 C.J.S. *Counties* § 281.

16-1407. (4550) Disbursement of appropriation—acquisition of lands—appropriation for exhibits at fairs. The funds derived from such appropriation or tax levy shall be kept in a separate fund by the county treasurer, and shall hereafter be paid out by the said treasurer on order signed by the president and secretary of the said fair commission.

The board of county commissioners of any county in the state of Montana may purchase, receive by donation, or own and hold a tract of land in their respective counties, not exceeding one hundred sixty (160) acres, as county fair grounds, and an additional tract of land in their respective counties, not exceeding eighty (80) acres, as junior fair grounds, which lands may be used by the county fair commission for the purpose of promoting the interests of horticulture, agriculture and stock raising. The board of county commissioners who shall avail themselves of the foregoing provisions may purchase, erect, construct and maintain permanent improvements on such fair grounds and junior fair grounds.

The board of county commissioners of any county in Montana may appropriate each year the sum of one thousand dollars (\$1,000.00), or so much thereof as may be necessary, out of the general funds of the county, for the purpose of defraying the expenses of collecting, transporting, and taking care of any exhibit from such county at any state fair, county agricultural fair, 4-H club or future farmers fair, seed show or other agricultural exhibit held within the state or county.

History: En. Sec. 1, Ch. 165, L. 1907; re-en. Sec. 2932, Rev. C. 1907; amd. Sec. 6, Ch. 131, L. 1917; amd. Sec. 2, Ch. 139, L. 1921; re-en. Sec. 4550, R. C. M. 1921; amd. Sec. 1, Ch. 6, L. 1945; amd. Sec. 2, Ch. 176, L. 1947.

References

Cascade County v. Penwell, 67 F Supp 253.

16-1408. (4550.1) Creation of fair districts—notice and hearing. Two (2) or more counties within the state constituting a contiguous territory, may group themselves together and form a fair district. The board of county commissioners of any such county, upon application from the regularly appointed county fair board, may by resolution declare its intention to join in and form a fair district. Notice of such resolution shall be published in two (2) regular weekly issues of a newspaper in such county, setting forth the date on which a hearing shall be had on said resolution by the taxpayers of the county and objections heard, if any there are thereto. After the consideration of the objections, if any be made, the county commissioners may authorize the county fair board to join with any existing

contiguous district and/or form a fair district with counties in contiguous territory.

History: En. Sec. 1, Ch. 178, L. 1931.

16-1409. (4550.2) Board of directors of fair district. The members of the respective county fair boards of the counties forming a fair district shall ex-officio constitute a board of directors for said fair district; and after a district has been formed and a county or counties are added thereto the members of the county fair board or boards of the county or counties added to the fair district shall likewise be ex-officio members of the board of directors of said fair district.

History: En. Sec. 2, Ch. 178, L. 1931.

16-1410. (4550.3) Powers of directors—meetings—officers—records and accounts. The board of directors shall be charged with the care and custody of all property of the district fair. They shall designate a place within the fair district where the fair grounds shall be located and this place shall thereafter be the place of business of said district. They shall meet at this place of business during the month of December of each year and organize; electing a chairman, vice-chairman and secretary for the board. Such subsequent meetings shall be held as may be found necessary for the conduct of the district fair. They shall formulate in writing and file in the district office all plans adopted by them from time to time in connection with the conduct of the affairs of said district. They shall see that all records and accounts are properly kept, supervised and approved; that proper vouchers evidence all disbursements of money; that the records are at all reasonable hours open to the tax payers of the counties comprising the district.

History: En. Sec. 3, Ch. 178, L. 1931.

16-1411. (4550.4) Secretary and treasurer to be appointed—acquisition of property—powers generally of directors. The board of directors shall have power to employ a secretary, whom they may vest with managerial powers; they shall also appoint a treasurer. The office of secretary may be combined in the same person with that of treasurer. They shall have power to acquire for the benefit of the district, such property, real and personal, as may be required in connection with the conduct of district fairs. They shall have power to do everything necessary in connection with the holding of the annual district fair, including the employment of labor, awarding of prizes, making of exhibition contracts, charging admission and entrance fees, and everything that is necessary in conducting the business of the district. They shall fix the salaries of all employees and prescribe the time and manner of payments. They shall be vested with the general powers granted commissioners of county fairs.

History: En. Sec. 4, Ch. 178, L. 1931.

16-1412. (4550.5) Budget for district fairs—consideration by county commissioners—tax levy—district fair fund—expenditures. (1) Aside from the revenue derived from annual fairs or other exhibitions conducted, the necessary revenue shall be raised as follows: The board of directors shall meet during the first week of May of each year, and shall make a

budget of the amounts required in the conduct of the affairs of the district, for the following year and shall deduct therefrom the probable income from the annual district fair and other exhibitions to be held by said district during the following year, and shall then apportion the remaining balance among the various counties forming said district in proportion to the assessed property of each county as determined by the assessment rolls of the preceding year; save in the case of the county in which the fair is being conducted, in which county the levy may, by mutual agreement of the directors, be made larger than in other counties comprising the district, and the secretary shall certify to each board of county commissioners the amount of said budget and the amount of revenue to be raised by such county for such purposes, and shall file a certified copy thereof with the clerk of the board of county commissioners of each of the counties in said district on or before the first day of June of each year. The respective boards of county commissioners of the counties comprising said district, shall meet in joint assembly with their county fair commissioners during the first week of June of each year and shall jointly consider the budget proposed by the board of directors of the district, and shall give such approval or suggest such amendments or modifications as to them may seem proper and desirable.

(2) If the county commissioners shall fail to hold such joint meeting, or shall fail to take any action, then the budget, certified by the secretary of the fair district shall be, without further action, deemed approved, and the sums of money apportioned to the county shall be the sums to be raised by special levy for said purpose. For the purpose of raising the aforesaid revenues, the board of county commissioners of each county in the district shall annually make a levy to raise the required sum apportioned to the respective counties; provided however, that the said levy shall not exceed one (1) mill on the dollar of the assessed valuation of all the taxable property in the county; except in the case of the county in which the fair is being conducted, in which county the levy shall not exceed one and one-half ($1\frac{1}{2}$) mills on the dollar of taxable property in the county; in addition thereto any and all moneys available to the holding of county fairs may be allotted and transferred to the use of the district fair as the respective county fair commissioners may elect; the funds available to a district fair shall, on the first Monday in August or as soon thereafter as may be possible, be deposited with the county treasurer of the county in which the district fair is to be held and by him and credited to a fund to be known as the district fair fund, held and paid out in the same manner as the county fair fund, except that it shall be paid out on district fair board warrants signed by the chairman or the vice-chairman and the secretary of the district fair board; provided that the treasurer of the county in which the district fair shall be held shall carry the moneys received from the various counties in the district in the regular county fair fund in the same manner as regular county fair moneys, payable, however, only on district fair warrants.

History: En. Sec. 5, Ch. 178, L. 1931.

16-1413. (4550.6) Ownership of district fair property. The ownership of the real or personal property acquired by the fair district shall be vested in the joint ownership of the counties comprising the district, or in one (1)

county for the benefit of the district, as may be provided for by the board of directors.

History: En. Sec. 6, Ch. 178, L. 1931.

16-1414. (4550.7) Additions of counties to fair districts. A contiguous county or counties forming a territory contiguous to a fair district may be added to such fair district after its formation under the same provisions as set forth in section one of this act; provided the board of directors of the fair district determine that it is to the best interest of said district that such county or counties be added.

History: En. Sec. 7, Ch. 178, L. 1931.

CHAPTER 15

COUNTY LAND ADVISORY BOARD

- Section 16-1501. County land advisory boards—creation and purpose.
 16-1502. Definition of terms.
 16-1503. Membership of board—duties.
 16-1504. Meetings—quorum—record of minutes—rules and regulations—county clerk to be clerk of board.
 16-1505. Policy of state declared.
 16-1506. Examination, classification and appraisal of land may be recommended by board.
 16-1507. Cooperation in establishing grazing districts.
 16-1508. Advisory capacity of board concerning leases.
 16-1509. Assistance in exchange of lands.

16-1501. (4573.1) County land advisory boards—creation and purpose. There is hereby created in each county, a department of county government of the state of Montana, to be known and designated as “the county land advisory board.” The general purposes of this department shall be to cooperate with the boards of county commissioners of each county in administering lands belonging to the respective counties.

History: En. Sec. 1, Ch. 67, L. 1933.

Collateral References

Counties⊃61.

20 C.J.S. Counties § 100.

16-1502. (4573.2) Definition of terms. In this act, the term, “lands,” shall mean all lands now owned by the respective counties, which have been acquired by the counties through tax deed proceedings and any lands to be hereafter acquired by the same means, and all lands acquired by the respective counties by deed, exchange, or in any manner whatsoever, excepting, however, such lands as are owned or may be acquired for the regular conduct of county affairs. The term “board” shall mean “the county land advisory board.”

History: En. Sec. 2, Ch. 67, L. 1933.

Collateral References

Counties⊃106.

20 C.J.S. Counties 169.

16-1503. (4573.3) Membership of board—duties. The board of each county shall consist of five members. The membership and terms shall be as follows: Three properly qualified taxpayers and residents, to be appointed

by the judge of the district court, one for a two year term; one for a four year term; and one for a six year term, (and on the expiration of such terms, the succeeding members shall be appointed for the term of six years, the state senator and one state representative, who shall be designated by the judge of the district court.) The members shall serve without pay. The board shall advise with boards of county commissioners in the direction, control, care, management, appraisal, lease, sale, exchange and disposition of all lands, when so requested by said board of county commissioners.

History: En. Sec. 3, Ch. 67, L. 1933.

Collateral References

Counties↔62, 65, 106.

20 C.J.S. Counties §§ 101, 106, 169.

16-1504. (4573.4) Meetings—quorum—record of minutes—rules and regulations—county clerk to be clerk of board. The board shall hold regular meetings on the first Wednesday following the first Monday of each month, and may hold meetings whenever deemed necessary upon call of the chairman, or a majority of the members. Three members of the board shall constitute a quorum for the transaction of business. The board shall, from its membership, select a chairman. It shall be the duty of the board to keep a record of the minutes of all meetings thereof in a suitable book provided by the board of county commissioners for that purpose, and to preserve all important documents, maps, plats and papers. The board may adopt whatever rules and regulations it deems proper for the conduct of its meetings. The county clerk shall be the clerk of said board, and as such shall keep the minutes of all meetings thereof and be custodian of all its records.

History: En. Sec. 4, Ch. 67, L. 1933.

Collateral References

Counties↔88.

20 C.J.S. Counties § 139.

16-1505. (4573.5) Policy of state declared. It is hereby declared to be the policy of the state of Montana: To promote the conservation of the natural resources of the state; to provide for the conservation, protection and development of forage plants, and for the beneficial utilization thereof for grazing by livestock under such regulations as may be considered necessary; to put into crop production only such lands as are properly fitted therefor; to encourage the storage and conservation of water for livestock and irrigation; to place the farming and livestock industries upon a permanent and solid foundation; to extend preference in sales and leases of lands to resident farmers, stockmen and taxpayers; to gradually restore to private ownership the immense areas of lands, which have passed into county ownership because of tax delinquencies.

History: En. Sec. 5, Ch. 67, L. 1933.

16-1506. (4573.6) Examination, classification and appraisal of land may be recommended by board. The board may recommend the examination, classification and appraisal of such lands as in its opinion have not previously been properly examined, classified and appraised.

History: En. Sec. 6, Ch. 67, L. 1933.

16-1507. (4573.7) Cooperation in establishing grazing districts. The board may cooperate with boards of county commissioners in establishing

grazing districts or entering into agreements with other landowners for the establishment of grazing districts, whereby county lands may be leased either on a per head or per acre basis.

History: En. Sec. 7, Ch. 67, L. 1933.

16-1508. (4573.8) Advisory capacity of board concerning leases. The board may act in an advisory capacity in fixing the fees, terms and conditions of grazing and agricultural leases.

History: En. Sec. 8, Ch. 67, L. 1933.

16-1509. (4573.9) Assistance in exchange of lands. The board may be called upon by boards of county commissioners to assist in making exchanges of lands with other owners.

History: En. Sec. 9, Ch. 67, L. 1933.

Collateral References

Counties—110.

20 C.J.S. Counties § 172.

CHAPTER 16

RURAL IMPROVEMENT DISTRICTS

- Section 16-1601. Rural improvement districts—creation and objects.
 16-1602. Resolution of intention—publication, mailing and notice.
 16-1602.1. Repealed.
 16-1602.2. Repealed.
 16-1603. Extension of district by county commissioners, when.
 16-1604. Protests against creation or extension of district—hearing.
 16-1605. Jurisdiction attaches, when—resolution creating district.
 16-1606. Sufficiency of subsequent resolutions, etc.
 16-1607. Notice inviting proposals—publication and posting—opening bids—re-advertisement.
 16-1608. Reletting or completion of contract on delinquency of contractor.
 16-1609. Bond of contractor or contracting owners.
 16-1610. Notice of defects or irregularities—objections.
 16-1611. Assessment of property—apportionment of costs—railroads.
 16-1612. Federal property omitted from assessment.
 16-1613. Tax levy—resolution—term of years.
 16-1614. Notice of resolution—contents—objections.
 16-1615. Damages to be added to cost, when—additional assessments.
 16-1616. Incidental expenses as costs of improvement—duty of county clerk.
 16-1617. Special assessments, etc., a lien on property.
 16-1618. Effect of misnomer or mistake.
 16-1619. Maintenance of improvements—resolution—change in maintenance districts.
 16-1620. Form and terms of district warrants and bonds.
 16-1621. Contracts payable in warrants—conversion into cash, when.
 16-1622. County treasurer to collect assessments.
 16-1623. Correction of erroneous or invalid assessment.
 16-1624. Payment of tax under protest—action to recover.
 16-1625. Mistake not to vitiate liens.
 16-1626. Definition of terms.
 16-1627. Jurisdiction of board preserved on adjournment—notice of hearing.
 16-1628. County clerk to post notices—effect of error.
 16-1629. Maintenance of lighting system in rural improvement districts—contract for furnishing light—apportionment of costs—maintenance fund—lien of assessment.
 16-1630. Power to change boundaries—application of act.
 16-1631. Transfer of management and control of district to city or town.
 16-1632. Authority of city or town to levy tax.

16-1601. (4574) Rural improvement districts — creation and objects.

Whenever the public interest or convenience may require, and upon the petition of sixty per centum (60%) of the freeholders affected thereby, the board of county commissioners is hereby authorized and empowered to order and create special improvement districts in thickly populated localities outside of the limits of incorporated towns and cities for the purpose of building, constructing and maintaining sanitary and storm sewers, light systems, waterworks plants, water systems, sidewalks and such other special improvements as may be petitioned for.

History: En. Ch. 123, L. 1915; superseded by Ch. 156, L. 1917; amd. Ch. 67, L. 1919; superseded by Sec. 1, Ch. 147, L. 1921; re-en. Sec. 4574, R. C. M. 1921; amd. Sec. 1, Ch. 133, L. 1929.

County Liable if District Warrants Paid Out of Order of Registration, Same as City

Where defendant county created rural improvement district under ch. 123, laws of 1915, it assumed the same duties as a city regarding payment of registered warrants of the district in their order. County treasurer paid district warrants which had been registered subject to those of plaintiff

who did not discover the facts until the fund on which her warrants were drawn had been exhausted. Held; the county was generally liable. *Witter v. Phillips County*, 111 M 352, 356, 109 P 2d 56.

References

Swords v. Simineo, 68 M 164, 170, 216 P 806.

Collateral References

Counties \Rightarrow 22.

20 C.J.S. Counties § 50.

48 Am. Jur. 663, Special or Local Assessments, §§ 114 et seq.

16-1602. (4575) Resolution of intention — publication, mailing and notice.

Before creating any special improvement district for the purpose of making any of the improvements, acquiring any private property for any purpose authorized by this act, the board of county commissioners shall pass a resolution of intention so to do, which resolution shall designate the number of such district, describe the boundaries thereof, and state therein the general character of the improvements which are to be made, designate the name of the engineer who is to have charge of the work, and an approximate estimate of the cost thereof. Upon having passed such a resolution the board of county commissioners must give notice of the passage of such resolution of intention, which notice must be published for ten consecutive days in a daily newspaper or in two issues of a weekly newspaper published nearest to the place where such improvement district is to be created, and shall also cause to be posted within the boundaries of such special improvement district, a copy of such notice in three public places, and a copy of such notice shall be mailed to every person, firm or corporation, or the agent of such person, firm or corporation owning property within the proposed district, at his last known place of residence upon the same day such notice is first published or posted.

Such notice must describe the general character of the improvement, or improvements, so proposed to be made, state the estimated cost thereof, and designate the time when, and the place where, the board of county commissioners will hear and pass upon all protests that may be made against the making or maintenance of such improvements, or the creation of such district, and the said notice shall refer to the resolution on file in the office of the county clerk for the description of the boundaries.

History: En. Ch. 123, L. 1915; superseded by Ch. 156, L. 1917; amd. Ch. 67, L. 1919; superseded by Sec. 2, Ch. 147, L. 1921; re-en. Sec. 4575, R. C. M. 1921.

Operation and Effect

Failure to give the notice required by this section, in the attempted creation of a rural improvement district deprived the county of jurisdiction to proceed and a property owner, in his action to enjoin the collection of the tax against his property to pay for the improvement, was not estopped to deny the validity of the assessment by his omission to object to the creation of the district prior to its comple-

tion. *Billings B. W. Assn. v. Yellowstone Co.*, 70 M 401, 225 P 996.

References

Swords v. Simineo, 68 M 164, 216 P 806; *Swords v. Nutt*, 11 F 2d 936.

Collateral References

48 Am. Jur. 671, *Special or Local Assessments*, §§ 122 et seq.

16-1602.1, 16-1602.2. Repealed—Chapter 57, Laws of 1953.**Repeal**

These sections (Secs. 2, 3, Ch. 44, Laws 1951), relating to the recording by city, town, or county clerks of notice of pro-

ceedings for the installation of special improvements, were repealed by Sec. 1, Ch. 57, Laws 1953, effective February 20, 1953.

16-1603. (4576) Extension of district by county commissioners, when. Whenever a contemplated work, or improvement, in the opinion of the board of county commissioners, is of more than local or ordinary public benefit, or whenever according to the estimates furnished by the county surveyor or an engineer approved by the board of county commissioners and designated in the petition, the total estimated cost and expenses thereof would exceed one-half of the total assessed value of the lots and lands assessed, if assessed upon the lots and lands fronting upon such proposed work or improvement according to the valuation fixed by the last assessment-roll, whereon it was assessed for taxes, the board of county commissioners may make the expense of such work chargeable upon the extended district, and which may include other lots and lands not fronting on the improvement, and which the said board of county commissioners shall in its resolution of intention declare to be the district benefited by said work or improvements, and to be assessed to pay the cost and expense thereof.

History: En. Ch. 123, L. 1915; superseded by Ch. 156, L. 1917; amd. Ch. 67, L. 1919; superseded by Sec. 3, Ch. 147, L. 1921; re-en. Sec. 4576, R. C. M. 1921.

References

Swords v. Simineo, 68 M 164, 216 P 806.

16-1604. (4577) Protests against creation or extension of district—hearing. At any time within fifteen days after the date of the first publication of the notice of the passage of the resolution of intention, any owner of property liable to be assessed for said work may make written protest against the proposed work or against the extending or creation of the district to be assessed, or both. Such protest must be in writing and be delivered to the county clerk, who shall endorse thereon the date of its receipt by him. At the next regular meeting of the board of county commissioners, after the expiration of the time within which said protest may be so made, the board of county commissioners shall proceed to hear and pass upon all protests so made, and its decision shall be final and conclusive; provided, however, that when the protest is against the proposed work and the cost thereof is to be assessed upon the property fronting thereon, and the board of county commissioners finds that such protest is made by the owners of more than fifty per cent of the area fronting on the proposed work, or when the protest is against the proposed work and the cost thereof is to be assessed upon the property within the extended district, and the

board of county commissioners finds that such protest is made by the owners of more than one-half of the area of the property to be assessed for such improvements, no further proceedings shall be taken for a period of six months from the date when said protest was received by the said county clerk, except in case the improvements are the construction of sanitary sewers, when the said protests may be overruled by a unanimous vote of the board of county commissioners. In determining whether or not sufficient protests have been filed in the proposed district to prevent further proceedings therein, property owned by the county shall be considered the same as other property in the district. The board of county commissioners may adjourn said hearing from time to time.

History: En. Ch. 123, L. 1915; superseded by Ch. 156, L. 1917; amd. Ch. 67, L. 1919; superseded by Sec. 4, Ch. 147, L. 1921; re-en. Sec. 4577, R. C. M. 1921.

References

Swords v. Simineo, 68 M 164, 170, 216 P 806; Billings B. W. Assn. v. Yellowstone Co., 70 M 401, 225 P 996.

16-1605. (4578) Jurisdiction attaches, when—resolution creating district. When no protests have been delivered to the county clerk within fifteen days after the date of the first publication of the notice of the passing of the resolution of intention, or when a protest shall have been found by said board of county commissioners to be insufficient, or shall have been overruled, or when a protest against the extending of the proposed district shall have been heard and denied, immediately thereupon the board of county commissioners shall be deemed to have acquired jurisdiction to order improvements, but before ordering any of the said proposed improvements, the board of county commissioners shall pass a resolution creating the said special improvement district in accordance with the resolution of intention theretofore introduced and passed by the board of county commissioners.

History: En. Ch. 123, L. 1915; superseded by Ch. 156, L. 1917; amd. Ch. 67, L. 1919; superseded by Sec. 5, Ch. 147, L. 1921; re-en. Sec. 4578, R. C. M. 1921.

References

Swords v. Simineo, 68 M 164, 170, 216 P 806; Billings B. W. Assn. v. Yellowstone Co., 70 M 401, 225 P 996.

16-1606. (4579) Sufficiency of subsequent resolutions, etc. In all resolutions, notices, orders and determinations subsequent to the resolution of intention and notice of improvements it shall be sufficient to briefly describe the work or the assessment district, or both, and to refer to the resolution of intention for further particulars.

History: En. Ch. 123, L. 1915; superseded by Ch. 156, L. 1917; amd. Ch. 67,

L. 1919; superseded by Sec. 6, Ch. 147, L. 1921; re-en. Sec. 4579, R. C. M. 1921.

16-1607. (4580) Notice inviting proposals—publication and posting—opening bids—re-advertisement. (1) A notice inviting proposals and referring to specifications on file with the engineer selected as hereinbefore provided, shall be published at least twice in a daily, semi-weekly or weekly newspaper published and circulated nearest to the boundaries of the said proposed improvement district, and which paper shall be designated by the board of county commissioners for that purpose, and a copy of said notice shall be posted in at least three public places within the boundaries of the proposed district.

(2) The board of county commissioners may call for bids for proposals for several kinds or types of materials for any of the improvements pro-

posed, reserving the right to select the kind of type or materials to be used in making any or all of said improvements after the bids or proposals therefor shall have been opened, examined and declared.

(3) The time fixed for the opening of the bids shall not be less than fifteen days from the time of the final publication of said notice. All proposals or bids offered shall be accompanied by a check payable to the board of county commissioners, certified by a responsible bank, for an amount which shall not be less than ten per cent of the aggregate of said proposal. Such proposals or bids shall be delivered to the county clerk, and the board of county commissioners shall, in open session, publicly open and examine and declare the same; provided, however, that no proposal or bid shall be considered unless accompanied by said check.

(4) The board of county commissioners may reject any and all proposals or bids should it deem this for the public good, and also the bid of any party who has been delinquent or unfaithful in any former contract with the board of county commissioners, and shall reject all proposals, other than the lowest regular proposal or bid of any responsible bidder, and may award the contract for such work or improvement, to the lowest responsible bidder at the prices named in his bid.

(5) If the bids are rejected or no bids are received the board of county commissioners may within six months thereafter re-advertise for proposals or bids for the performance of the work as in the first instance, without further proceedings, and thereafter proceed in the manner in this section provided, and shall thereupon return to the proper parties the checks accompanying the bids so rejected, but the check accompanying said accepted proposal or bid shall be held by the county clerk until the contract for doing said work as hereinafter provided has been entered into, either by the said lowest bidder, or by the owners of over fifty per cent of frontage, whereupon said certified check shall be returned to said bidder, but if said bidder fails, neglects or refuses to enter into the contract to perform said work and improvements as hereinafter provided, then the certified check accompanying his bid, in the amount herein mentioned, shall be declared to be forfeited to the said board of county commissioners, and shall be collected by it, and paid into the general fund of the county.

History: En. Ch. 123, L. 1915; superseded by Ch. 156, L. 1917; amd. Ch. 67, L. 1919; superseded by Sec. 7, Ch. 147, L. 1921; re-en. Sec. 4580, R. C. M. 1921.

Collateral References

43 Am. Jur. 750, Public Works and Contracts, §§ 10 et seq.

16-1608. (4581) Reletting or completion of contract on delinquency of contractor. If the contractor who may have taken any contract does not complete same within the time limited in the contract, or within such further time as may be given him, the engineer selected as hereinbefore provided shall report such delinquency to the board of county commissioners, which may relet the unfinished portion of said work, after pursuing the formalities prescribed herein for the letting of the whole in the first instance, or the board of county commissioners shall have the right, in its option, to complete the contract and deduct any cost in excess of the contract price thereof from any money, bonds or warrants, due such contractor, and in the event there is no money, bonds or warrants due such contractor from which to deduct such cost, then and in such event the board of county com-

missioners shall have the right to sue such contractor and recover from him such costs.

History: En. Ch. 123, L. 1915; super- 1919; superseded by Sec. 8, Ch. 147, L. seded by Ch. 156, L. 1917; amd. Ch. 67, L. 1921; re-en. Sec. 4581, R. C. M. 1921.

16-1609. (4582) Bond of contractor or contracting owners. All contractors and contracting owners included shall at the time of executing any contract for any work, execute a bond to the satisfaction and approval of the board of county commissioners, with two or more sureties, payable to said county in a sum not less than twenty-five per cent of the amount of the contract, conditioned for the faithful performance of the contracts, indemnifying the county from any detriment, damage or loss growing out of said work, and the sureties shall justify before any person competent to administer an oath in double the amount mentioned in said bond, over and above all statutory exemptions; provided, however, that nothing herein contained shall be considered as to prevent or prohibit the board of county commissioners from requiring or accepting in any case a bond furnished by a surety company authorized to transact business in the state of Montana.

History: En. Ch. 123, L. 1915; super- 1919; superseded by Sec. 9, Ch. 147, L. seded by Ch. 156, L. 1917; amd. Ch. 67, L. 1921; re-en. Sec. 4582, R. C. M. 1921.

16-1610. (4583) Notice of defects or irregularities—objections. At any time within sixty days from the date of the awarding of a contract, any owner or other person having any interest in any lot, tract or plot of land liable to assessment, who claims that any of the previous acts or proceedings relating to said improvements are irregular, defective, erroneous or faulty, or that his property will be damaged by the making of any of the improvements in the manner contemplated, may file with the county clerk a written notice specifying in what respect said acts or proceedings are irregular, defective, erroneous or faulty, or in what manner and to what extent his property will be damaged by the making of said improvements. Said notice shall state that it is made in pursuance of this section. All objections in any act or proceeding or in relation to the making of said improvements must be made in writing and in the manner and at the time aforesaid, and all claims for damages therefor shall be waived by such property owner, in case no written objection is filed by him; provided, that notice of the passage of the resolution of intention has been actually published and the notice of improvements posted as provided in this act.

History: En. Ch. 123, L. 1915; super- 1919; superseded by Sec. 10, Ch. 147, L. seded by Ch. 156, L. 1917; amd. Ch. 67, L. 1921; re-en. Sec. 4583, R. C. M. 1921.

16-1611. (4584) Assessment of property—apportionment of costs—railroads. (1) To defray the cost of making any of the improvements provided for in this act, the board of county commissioners shall adopt the following method of assessment: The board of county commissioners shall assess the entire cost of such improvements against the entire district and each lot or parcel of land assessed in such district to be assessed with that part of the whole cost which its area bears to the area of the entire district, exclusive of streets, avenues, alleys and public places; or where said rural improvement district is located more than five (5) miles from the boundary of an incorporated city or town, said assessment may, at the option of the board of county commissioners, be based upon the assessed value of the

lots or pieces of land within said district; provided, however, that the board of county commissioners in its discretion shall have the power to pay the whole or any part of the cost of any street, avenue or alley intersection out of any funds in its hands available for that purpose, or to include the whole or any part of such costs within the amount of the assessment to be paid by the property in the district. In order to apportion the cost of any of the improvements herein provided for, between the corner lots and inside lots of any block, the board of county commissioners may in the resolution creating any improvement district provide that whenever any of the improvements herein provided for shall be along any side street or abutting upon the side of any corner lot or block, that the amount of the assessment against the property in said district to defray the cost of such improvements shall be so assessed that each square foot of the land embraced within any such corner lot shall bear double the amount of the cost of such improvement that a square foot of any inside lot shall bear.

(2) Whenever any portion of the surface of a street is kept or used by any person, firm or corporation for railroad or for street railway purposes, the cost and expense of making such improvements between the rails and for one foot on each side thereof shall be paid by the person, firm or corporation owning such railroad, and where double tracks of railroads are laid, such person, firm or corporation shall pay the costs of making such improvement or improvements between such tracks and between all switches and spurs.

History: En. Ch. 123, L. 1915; superseded by Ch. 156, L. 1917; amd. Ch. 67, L. 1919; superseded by Sec. 11, Ch. 147, L. 1921; re-en. Sec. 4584, R. C. M. 1921; amd. Sec. 2, Ch. 133, L. 1929; amd. Sec. 1, Ch. 131, L. 1935; amd. Sec. 1, Ch. 53, L. 1939; amd. Sec. 1, Ch. 136, L. 1941.

References

Swords v. Simineo, 68 M 164, 170, 216 P 806; Billings B. W. Assn. v. Yellowstone Co., 70 M 401, 225 P 996.

Collateral References

48 Am. Jur. 555, Special or Local Assessments, Generally.

16-1612. (4585) Federal property omitted from assessment. Whenever any lot, piece or parcel of land belonging to the United States or mandatory of the government shall front upon the proposed work or improvement, or to be included within the district declared by the board of county commissioners in its resolution of intention to be a district to be assessed to pay the cost and expenses thereof, the said board of county commissioners shall in the resolution of intention declare that said lots, pieces or parcels of land or any of them shall be omitted from the assessment thereto to be made to cover the cost and expenses of said work or improvement and the cost of said work or improvement in front of said lots, pieces or parcels of land shall be paid by the county from its general fund.

History: En. Ch. 123, L. 1915; superseded by Ch. 156, L. 1917; amd. Ch. 67, L. 1919; superseded by Sec. 12, Ch. 147, L. 1921; re-en. Sec. 4585, R. C. M. 1921.

Operation and Effect

In an action by the receiver of a national bank to recover an assessment paid under protest for improvements in a rural improvement district under this section on the ground that the bank was a "mandatory" of the government and therefore

exempt, complaint held insufficient for failure to allege that the property was excluded from liability in the resolution of intention to create the district or that plaintiff acquired the property prior to the time it was passed by the board of county commissioners. *Swords v. Simineo*, 68 M 164, 170, 216 P 806.

Held, that an irrigation company engaged in the reclamation of arid lands, under the Carey act is not a mandatory of the federal government, and therefore

not exempt from assessments for special improvements. *Billings B. W. Assn. v. Yellowstone Co.*, 70 M 401, 225 P 996.

References

Swords v. Nutt, 11 F 2d 936.

16-1613. (4586) Tax levy—resolution—term of years. To defray the cost of making improvements in any special improvement district, the board of county commissioners shall, by resolution, levy and assess a tax upon all property in the district created for such purpose, by using for a basis for such assessment the method provided for by this act. Such resolution shall contain a description of each lot or parcel of land, with the name of the owner, if known, and the amount of each partial payment, when made, and the day when the same shall become delinquent. The payment of the assessment to defray the cost of constructing any improvements in special improvement districts may be spread over a term of not to exceed twenty (20) years, payment to be made in equal annual installments.

History: En. Ch. 123, L. 1915; superseded by Ch. 156, L. 1917; amd. Ch. 67, L. 1919; superseded by Sec. 13, Ch. 147, L. 1921; re-en. Sec. 4586, R. C. M. 1921; amd. Sec. 1, Ch. 140, L. 1947.

References

Swords v. Simineo, 68 M 164, 170, 216 P 806; *Billings B. W. Assn. v. Yellowstone Co.*, 70 M 401, 225 P 996.

16-1614. (4587) Notice of resolution—contents—objections. Such resolution, signed by the chairman of the board of county commissioners, shall be kept on file in the office of the county clerk, and a notice signed by the county clerk, stating that the resolution levying a special assessment to defray the cost of making such improvements is on file in the office of the county clerk, subject to inspection, shall be published at least one publication in a newspaper published nearest to where the special improvement is to be made. Such notice shall state the time and place in which objections to the final adoption of such resolution will be heard by the board of county commissioners, and the time for such hearing shall be not less than five days after the publication of such notice. At the time so fixed, the board of county commissioners shall meet and hear all such objections, and for that purpose may adjourn from day to day and may by resolution modify such assessment in whole or in part. A copy of such resolution, certified by the county clerk, must be delivered to the county treasurer two days after its passage.

History: En. Ch. 123, L. 1915; superseded by Ch. 156, L. 1917; amd. Ch. 67, L.

1919; superseded by Sec. 14, Ch. 147, L. 1921; re-en. Sec. 4587, R. C. M. 1921.

16-1615. (4588) Damages to be added to cost, when—additional assessments. Whenever the owner or any one interested in any property, situate in the special improvement district, after having filed with the county clerk a written notice, claiming that his property had been damaged, shall be awarded or recover any amount on account of damages sustained to said property by the reason of the construction of any improvement in said special improvement district, before the resolution levying the assessment to defray the cost of making such improvements in said district has been passed and adopted by the board of county commissioners, the amount so ordered as recovered shall be added to and constitute a part of making such improvements, but if the resolution levying the assessment to defray the cost and expenses of making said improvements has been passed and adopted by the board of county commissioners, it shall pass and adopt a

supplemental resolution levying an additional assessment against the property in said district for the purpose of paying the amount so awarded of covering the said supplemental resolution, and shall be made in the same manner and prepared and certified the same as the original resolution levying the assessment to defray the cost of making such improvements.

History: En. Ch. 123, L. 1915; superseded by Ch. 156, L. 1917; amd. Ch. 67, L. 1919; superseded by Sec. 15, Ch. 147, L. 1921; re-en. Sec. 4588, R. C. M. 1921.

References

Swords v. Simineo, 68 M 164, 170, 216 P 806; Billings B. W. Assn. v. Yellowstone Co., 70 M 401, 225 P 996.

16-1616. (4589) Incidental expenses as costs of improvement—duty of county clerk. The cost and expense connected with and incidental to the formation of any special improvement district, including the cost of preparation of plans, specifications, maps, plats, engineering, superintendence and inspection, and preparation of assessment-rolls, shall be considered a part of the cost and expenses of making the improvements within such special improvement districts, and it shall be the duty of the engineer selected as hereinbefore provided to keep an account of all costs and expenses incurred in his office in connection with every special improvement district, and certify the same to the county clerk, whose duty it shall be to prepare all necessary schedules and resolution levying the taxes and assessments in such special improvement district.

History: En. Ch. 123, L. 1915; superseded by Ch. 156, L. 1917; amd. Ch. 67, L. 1919; superseded by Sec. 16, Ch. 147, L. 1921; re-en. Sec. 4589, R. C. M. 1921.

16-1617. (4590) Special assessments, etc., a lien on property. Any special assessment made and levied to defray the cost and expenses of any of the work enumerated in this act, together with any percentages imposed for delinquency and for cost of collection, shall constitute a lien upon and against the property upon which such assessment is made and levied, and from and after the date of the passage of the resolution levying such assessment, which lien can only be extinguished by payment of such assessment, with all penalties, costs and interest.

History: En. Ch. 123, L. 1915; superseded by Ch. 156, L. 1917; amd. Ch. 67, L. 1919; superseded by Sec. 17, Ch. 147, L. 1921; re-en. Sec. 4590, R. C. M. 1921.

Collateral References

48 Am. Jur. 724, Special or Local Assessments, §§ 194 et seq.

16-1618. (4591) Effect of misnomer or mistake. When under any of the provisions of this act special taxes and assessments are assessed against any lot or parcel of land as the property of a particular person, no misnomer of the owner or supposed owner, or other mistake, relating to the ownership thereof, shall affect such assessment or render it void or voidable.

History: En. Ch. 123, L. 1915; superseded by Ch. 156, L. 1917; amd. Ch. 67, L. 1919; superseded by Sec. 18, Ch. 147, L. 1921; re-en. Sec. 4591, R. C. M. 1921.

16-1619. (4592) Maintenance of improvements—resolution—change in maintenance districts. (1) Whenever any sanitary or storm sewers, lights or light systems, water-works plants, water systems, or sidewalks, or any other special improvements petitioned for, or created by the state or federal government, have been made, built, constructed, erected or accomplished as in this act provided, it is hereby made the duty of the board of county commissioners, under whose jurisdiction the district was created or super-

vised or directed, adequately and suitably to maintain and preserve said improvements and fully to keep the same in proper repair and operation by contract or otherwise, in such way or manner as the board shall deem suitable and proper. The whole cost of maintaining, preserving and repairing of said improvements in any improvement district shall be paid by assessing the entire district in the method provided for by section 16-1603 of this code.

(2) It shall be the duty of the board to estimate as near as practicable the cost of maintaining, preserving or repairing the improvements in each district for each year beginning January first or such other time as it may appear necessary; and before the first Monday in September of each year the board shall pass and finally adopt a resolution levying and assessing all the property within the district within an amount equal to the whole cost of maintaining, preserving or repairing said improvements within the district, and the same shall be proportioned as provided in section 16-1603, supra. Said resolution levying assessments to defray the cost of maintenance, preservation or repairs of such improvements shall be prepared and certified to in the manner as near as may be to a resolution levying assessments for making, constructing and installing the improvements in said special improvement districts, and the money collected therefor shall be paid into a fund known as Special Improvement District No.....Maintenance Fund, the number of which shall correspond with the number of special improvement district in which the improvements so maintained are situated; and such fund shall be used to defray the expense of maintenance, preservation or repair of said improvements, and for no other purpose. Any special assessment levied and made for any of the purposes in this section mentioned, together with all costs and penalties, shall constitute a lien upon and against the property upon which said assessment is made and levied from and after the date of the final passage and adoption of the resolution levying the same, which lien can only be extinguished by payment of such assessment, with all penalties, costs and interest.

The board shall have the power not more than once a year of changing, by resolution, the boundaries of any maintenance district.

History: En. Ch. 123, L. 1915; superseded by Ch. 156, L. 1917; amd. Ch. 67, L. 1919; superseded by Sec. 19, Ch. 147, L. 1921; re-en. Sec. 4592, R. C. M. 1921; amd. Sec. 3, Ch. 133, L. 1929; amd. Sec. 1, Ch. 104, L. 1935.

References

Swords v. Simineo, 68 M 164, 170, 216 P 806; Billings B. W. Assn. v. Yellowstone Co., 70 M 401, 225 P 996.

16-1620. (4593) Form and terms of district warrants and bonds.

(1) All costs and expenses incurred in the construction or maintenance of any improvement specified in this act, in any improvement district shall be paid for by special improvement district bonds, or warrants. Such bonds or warrants shall be drawn in substantially the following form:

District No. _____
United States of America
State of Montana

Warrant or
(Bond No. _____) Dollars
Interest at the rate of _____ per cent per annum, payable annually.

Special Improvement District Coupon Warrant or Bonds

_____, Montana.

Issued by the County of _____, Montana.

The county treasurer of _____ County, Montana, will pay to _____, or bearer, the sum of _____ dollars, as authorized by Resolution No. _____, as passed on the _____ day of _____, 19____, creating or maintaining Special Improvement District No. _____, for the construction (or maintenance) of the improvements and work performed as authorized in said resolution to be done in said district, and all laws, resolutions and ordinances relating thereto, in payment of the contract in accordance therewith. The principal and interest of this warrant (or bond) are payable at the office of the county treasurer of _____ County, Montana.

This warrant (or bond) bears interest at the rate of _____ per cent per annum from the date of the registration of this warrant (or bond), as expressed herein, until the date called for the redemption by the county treasurer. The interest on this warrant (or bond) is payable annually on the first day of _____ of each year, unless paid previous thereto and as expressed by the interest coupons hereto attached, which bear the engraved facsimile signature of the chairman of the board of county commissioners and the county clerk.

This warrant (or bond) is payable from the collection of a special tax or assessment which is a lien against the real estate within said improvement districts, as described in said resolution hereinbefore referred to.

This warrant (or bond) is redeemable at the option of the county at any time there are funds to the credit of said special improvement district fund (construction and maintenance) for the redemption thereof, and in the manner provided for the redemption of the same.

It is hereby certified and recited, that all things required to be done precedent to the issuance of this warrant (or bond) have been properly done, happened and been performed in the manner prescribed by the laws of the state of Montana and the resolution and ordinances of the county of _____, Montana, relating to the issuance thereof.

Dated at _____, Montana, this _____ day of _____, 19____, County of _____, Montana.

(SEAL)

By _____, chairman of the board of county commissioners.

(SEAL)

_____, County Clerk

Registered at the office of the county treasurer of _____ County, Montana this _____ day of _____, 19____.

County Treasurer

(2) And the same shall be drawn against the special improvement district fund created for the district, that is, either the construction or maintenance fund as the case may be, and shall bear interest not to exceed

six per cent per annum from the date of registration until called for redemption or paid in full, interest to be payable annually on the first day of January of each year, unless the board of county commissioners prescribe another date. Such warrants (or bonds) shall be signed by the chairman of the board of county commissioners and the county clerk, and shall bear the corporate seal of the county. They shall be registered in the office of the county clerk and the county treasurer, and, if interest coupons be attached thereto, they shall also be so registered, and shall bear the signature of the chairman of the board of county commissioners and the county clerk; provided, however, that said coupons may bear the facsimile signatures of said officers in the discretion of the board of county commissioners. Said bonds shall be in denominations of one hundred dollars (\$100.00) or fractions, or multiples thereof; and may be issued in instalments, and may extend over a period of not to exceed twenty (20) years.

(3) Such warrants (or bonds) shall be redeemed by the county treasurer when there are funds in the special improvement district fund against which said warrants (or bonds) are issued available therefor; provided that the county treasurer shall first pay out of the proper special improvement district fund, annually, the interest on all outstanding warrants (or bonds) on presentation of the coupons belonging thereto, and any funds remaining in the proper fund shall be applied to the payment of the principal and the redemption of the warrants (or bonds) in order of their registration; provided, further, that whenever there are any funds in any special improvement district fund, after paying the interest on such warrants (or bonds) drawn against said fund, the county treasurer shall call in for payment outstanding warrants (or bonds), which, together with the interest thereon to the date of redemption, will equal the amount of said fund on that date, which date shall be fixed by the county treasurer, who shall give notice by publication once in a newspaper published in the city, or, at the option of the county treasurer, by written notice to the holder or holders of such warrants (or bonds), if their address be known, of the number of warrants (or bonds), and the date on which payment will be made, which date shall not be less than ten days after the date of publication or of service of notice, and on which date so fixed, interest shall cease. When it is provided by the resolution creating or maintaining the district that the work be paid in warrants (or bonds) the board of county commissioners shall by resolution fix the denominations of such warrants (or bonds) which may be one hundred dollars (\$100.00), or fractions or multiples thereof, the rate of interest, which shall not exceed six per cent (6%) per annum, and provide for the payment or redemption of such warrants (or bonds) at a time certain, which time of payment must not exceed twenty (20) years from and after the date of issuance.

History: En. Ch. 123, L. 1915; superseded by Ch. 156, L. 1917; amd. Ch. 67, L. 1919; superseded by Sec. 20, Ch. 147, L. 1921; re-en. Sec. 4593, R. C. M. 1921; amd. Sec. 1, Ch. 3, L. 1955.

16-1621. (4594) Contracts payable in warrants—conversion into cash, when. Whether provided in the call for proposals, or not, all contracts let under the provisions of this act shall be payable in bonds or warrants issued under the provisions hereof, and the board of county commissioners may

provide by contract with the person, persons or corporation doing the work, or making the improvement, or maintaining, preserving, or repairing the same, for the payment of which such warrants or bonds are issued, to deliver the said warrants or bonds in instalments as the work progresses, or upon the entire completion thereof; provided, however, that no warrants or bonds must be delivered to such contractor or contractors in excess of the amount of work actually done at the time of the delivery; nor shall the total amount issued be in excess of the total cost and expense of the improvements, and no warrants or bonds shall be delivered or received in payment of a less sum than its face value. And when it becomes necessary to pay for private property taken for the opening, widening or extending of any street, avenue or alley, or to pay any amount awarded or covered on account of damages to any property caused by the making of any improvements, in money, in cases where the persons whose property is so taken or damaged, refuse to receive pay in warrants or bonds, then the board of county commissioners shall have the power, under such regulations as it may prescribe, to sell such bonds or warrants for not less than par, and devote the moneys derived therefrom to the payment of the damages assessed or agreed upon for such property or the damages thereto.

History: En. Ch. 123, L. 1915; super- 1919; superseded by Sec. 21, Ch. 147, L. 1921; re-en. Sec. 4594, R. C. M. 1921.

16-1622. (4595) County treasurer to collect assessments. It shall be the duty of the county treasurer, in accordance with the provisions of the revised codes of Montana, where any resolution of assessment, either for construction or maintenance, has been duly certified by the county clerk, to collect such assessment in the same manner and at the same time as taxes for general and municipal purposes are collected by him.

History: En. Ch. 123, L. 1915; super- 1919; superseded by Sec. 22, Ch. 147, L. 1921; re-en. Sec. 4595, R. C. M. 1921.

16-1623. (4596) Correction of erroneous or invalid assessment. Whenever, by reason of any alleged non-conformity to any law, or by reason of any omission or irregularity, any special tax or assessment is either invalid or its validity is questioned, the board of county commissioners may make all necessary orders and may take all necessary steps to correct the same, and to re-assess and re-levy the same, including the ordering of work, with the same force and effect as it made at the time provided by law, or resolution relating thereto; and may re-assess and re-levy the same with the same force and effect as an original levy; whenever any apportionment or assessment is made, and any property is assessed too little or too much, the same may be corrected and re-assessed for such additional amount as may be proper, or the assessment may be reduced even to the extent of refunding the tax collected. Any special tax upon re-assessment or re-levy shall, so far as it is practicable, be levied and collected as the same would have been if the first levy had been enforced; and any provision of any law specifying a time when, or order in which acts shall be done in a proceeding which may result in a special tax shall be taken to be subject to the qualifications of this act. Any and every rule and regulation of any board of county commissioners passed in substantial conformity with this section is hereby legalized.

History: En. Ch. 123, L. 1915; super- 1919; superseded by Sec. 23, Ch. 147, L. seded by Ch. 156, L. 1917; amd. Ch. 67, L. 1921; re-en. Sec. 4596, R. C. M. 1921.

16-1624. (4597) Payment of tax under protest—action to recover. When any tax levied and assessed under any of the provisions of this act is deemed unlawful by the party whose property is thus taxed, or from whom such tax is demanded, such person may pay such tax or any part thereof deemed unlawful under protest to the county treasurer, and thereupon such party so paying, or his legal representative, may bring an action in any court of competent jurisdiction against the officer to whom such tax was paid, or against the county in whose behalf the same was collected, to recover such tax or any portion thereof so paid under protest; provided, however, that any action instituted to recover such tax paid under protest must be commenced within sixty days after the date of payment thereof. The tax so paid under protest shall be held by the county treasurer until the determination of any action brought for the recovery thereof.

History: En. Ch. 123, L. 1915; superseded by Ch. 156, L. 1917; amd. Ch. 67, L. 1919; superseded by Sec. 24, Ch. 147, L. 1921; re-en. Sec. 4597, R. C. M. 1921.

Collateral References

48 Am. Jur. 764, Special or Local Assessments, §§ 261 et seq.

16-1625. (4598) Mistake not to vitiate liens. Any mistake in the description of property or the name of the owner shall not vitiate any liens created by this act, unless it is impossible to identify the property from the description.

History: En. Ch. 123, L. 1915; super- 1919; superseded by Sec. 25, Ch. 147, L. seded by Ch. 156, L. 1917; amd. Ch. 67, L. 1921; re-en. Sec. 4598, R. C. M. 1921.

16-1626. (4599) Definition of terms. 1. The person owning the fee, or the person to whom, on the day the action is commenced, appears the legal title to the lot and lands, by deed duly recorded in the county recorder's office in each county, or the person in possession of lands, lots or portions of lots, or buildings under claim, or exercising acts of ownership over the same for himself, or as the executor, administrator or guardian of the owner, shall be regarded, treated and deemed to be the "owner" for the purpose of this act, according to the intent and meaning of that word as used in this act. And in case of property leased, the possession of the tenant or lessee holding and occupying under such persons shall be deemed the possession of such owner.

2. The words "work," "improved" and "improvement," as used in this act, shall include all work or the securing of property mentioned in this act, and also the construction, reconstruction, maintenance and repairs, of all or any portion of said work.

3. The term "incidental expenses," as used in this act, shall include the compensation of the engineer selected as hereinbefore provided for work done by him; also the cost of printing and advertising, as provided in this act; also the expenses of making the assessment for any work authorized by this act. All demands for incidental expenses in this subdivision shall be presented to the county clerk by itemized bill, duly verified by oath of the demandant.

4. The notices, resolutions, orders or other matter required to be published by the provisions of this act, shall be published in a daily news-

paper or a semi-weekly newspaper, or weekly newspaper, to be designated by the board of county commissioners, as often as the same is issued during the period specified for said publication, and no other statute shall govern or be applicable to publications herein provided for; provided, however, that in case there is no daily, semi-weekly or weekly newspaper printed or circulated in any such county, then such notices, resolutions, orders or other matters as are herein required to be published in a newspaper, shall be posted and kept posted for the same length of time as required herein for the publication of the same in a daily, semi-weekly or weekly newspaper, in three of the most public places in each voting precinct, except herein otherwise specifically provided. Proof of the publication or posting of any notice provided for herein shall be made by affidavit of the owner, publisher, printer or clerk of the newspaper, or of the poster of the notice. No publication of notice other than that provided for in this act shall be necessary to give validity to any of the proceedings provided therein. The word "twice," as used in this act, referring to the number of times, notices, resolutions or other matter shall be published, shall be held to mean publication of the same in two entire issues of the newspaper, one being on one day and the other issue being on a subsequent day of the same or subsequent week.

5. The word "municipality" and the word "city," as used in this act, shall be understood and so construed as to include, and are hereby declared to include, all corporations heretofore organized and now existing, and those hereafter organized for municipal purposes.

6. The word "paved" or "re-paved," as used in this act, shall be held to mean and include pavement of stone, whether paving blocks or macadam, or of bituminous rock or asphalt, or of wood, brick or other material, whether patented or not, which the board of county commissioners by rule or resolution shall adopt.

7. The word "street," as used in this act, shall be deemed and is hereby declared to include avenues, highways, lanes, alleys, crossings or intersections, courts and places, which have been dedicated and accepted according to the law or in common and undisputed use by the public for a period of not less than five years next preceding, and the term "main street" means such actually opened street or streets as bound a block; and the word "blocks," whether regular or irregular, shall mean such blocks as are bounded by main streets, or partially by a boundary line of the city.

8. The term "engineer," designated in the petition as used in this act, shall be understood and so construed as to mean the person, firm or corporation whose name is designated and approved by the board of county commissioners as the engineer in the original petition asking for the improvement and may be the county surveyor.

9. The term "board of county commissioners" is hereby declared to include any body or board which under the law is the legislative department of the government of the county.

10. The terms "clerk," "county clerk," as used in this act, are hereby declared to include any person or officer who shall be clerk of the said board of county commissioners.

11. The term "quarter block," as used in this act, as to irregular blocks, shall be deemed to include all lots or portions of lots having any frontage on either intersecting street half way from such intersection to the next main street, or when no main street intervenes all the way to the boundary line of any city.

12. The term "county treasurer," as used in this act, shall be held to mean and include any person who, under whatever name or title, is the custodian of the funds of the county.

13. The term "street intersection," wherever used in this act, shall be held to mean that parcel of land at the point of juncture or crossing of intersecting streets which lies between lines drawn from corner to corner of all lot lines immediately cornering at such juncture.

History: En. Ch. 123, L. 1915; superseded by Ch. 156, L. 1917; amd. Ch. 67, L. 1919; superseded by Sec. 26, Ch. 147, L. 1921; re-en. Sec. 4599, R. C. M. 1921.

References

Swords v. Nutt, 11 F 2d 936.

16-1627. (4600) Jurisdiction of board preserved on adjournment—notice of hearing. Whenever in proceedings hereunder, a time and place for hearing by the board of county commissioners is fixed, and, from any cause the hearing is not then and there held or regularly adjourned to a time and place fixed, the power and jurisdiction of the board of county commissioners in the premises shall not be thereby divested or lost, but the board of county commissioners may proceed anew to fix a time and place for the hearing and cause notice thereof to be given by publication by at least one insertion in a daily, semi-weekly or weekly newspaper, such publication to be at least five days before the date of the hearing, and thereupon the board of county commissioners shall have power to act as in the first instance.

History: En. Ch. 123, L. 1915; superseded by Ch. 156, L. 1917; amd. Ch. 67, L. 1919; superseded by Sec. 27, Ch. 147, L. 1921; re-en. Sec. 4600, R. C. M. 1921.

16-1628. (4601) County clerk to post notices—effect of error. Whenever any resolution, order, notice or determination is required to be published or posted, and the duty of posting or procuring the publication or posting the same is not specifically enjoined upon any officer in the county, it shall be the duty of the county clerk to post or procure the publication or posting thereof, as the case may be. No proceeding or step herein shall be invalidated or affected by any error or mistake or departure herefrom as to the officer or person posting or procuring the publication or posting of any resolution, notice, order or determination hereinunder when the same is actually published or posted for the time herein required.

History: En. Ch. 123, L. 1915; superseded by Ch. 156, L. 1917; amd. Ch. 67, L. 1919; superseded by Sec. 28, Ch. 147, L. 1921; re-en. Sec. 4601, R. C. M. 1921.

16-1629. (4601.1) Maintenance of lighting system in rural improvement districts—contract for furnishing light—apportionment of costs—maintenance fund—lien of assessment. (1) When there has been, or shall be, created a rural improvement district, according to the provisions of sections 16-1601 through 16-1632, for the purpose of securing a lighting system for the territory embraced in such rural improvement district, and no expense of construction is incurred by such rural improvement district in the installation of such lighting system, and it is necessary only to secure funds for

the maintenance and operation of said system, and lights for said territory can best be secured by entering a contract for such lighting with some other person or corporation, the board of county commissioners of such county may enter into a contract with other persons or corporation for the purpose of furnishing light to said rural improvement district.

(2) The cost of said service to said rural improvement district may be apportioned among the various tracts of land within said improvement district in proportion to the assessed value of said lands as determined by the said board of county commissioners, and before the first Monday of September of each year, the board of county commissioners shall pass, and finally adopt, a resolution levying and assessing all the property within the district, an amount equal to the whole cost of maintaining said lighting system, and the same shall be proportioned against the several tracts of land in said district as provided herein. Said resolution levying assessments to defray the cost of maintenance shall be prepared and certified to in the manner as near as may be to a resolution levying assessments for making, constructing, and installing the improvements in said special improvement districts, and the money collected therefor, shall be paid into a fund known as Special Improvement District No. Maintenance Fund, the number of which shall correspond with the number of the special improvement district in which the improvements so maintained are situated, and such funds shall be used to defray the expense of maintenance of said system, and for no other purpose. Any such assessment levied and made for any purpose in this section mentioned, together with all cost and penalties, shall constitute a lien upon and against the property upon which said assessments are made and levied from and after the date of the final passage and adoption of the resolution levying the same, which lien can be only extinguished by payment of such assessments, with all penalties, costs and interest.

History: En. Sec. 1, Ch. 58, L. 1933.

16-1630. (4601.2) Power to change boundaries—application of act. The board has the power not more than once a year of changing, by resolution, the boundaries of any maintenance district. Provisions of this act shall only apply to the method of securing funds for the maintenance of rural improvement districts for lighting systems.

History: En. Sec. 2, Ch. 58, L. 1933.

16-1631. (4602) Transfer of management and control of district to city or town. When a special improvement district has been created in accordance with the provisions of chapter 123, laws of the fourteenth legislative assembly, in any county of the state, and the property contained therein shall have become a part of or included within the boundaries of an incorporated city or town, such city or town is authorized and empowered to take over, operate, and control the same, and the board of county commissioners shall have the right and authority to transfer the operation, control and management thereof to such city or town, upon such terms and conditions as may be agreed upon.

History: En. Sec. 1, Ch. 156, L. 1919;
re-en. Sec. 4602, R. C. M. 1921.

16-1632. (4603) Authority of city or town to levy tax. Such city or town is authorized to levy and collect a special tax for the purpose of raising funds to pay the expense of maintenance, operation, and control of such improvement district.

History: En. Sec. 2, Ch. 156, L. 1919;
re-en. Sec. 4603, R. C. M. 1921.

CHAPTER 17

WEED CONTROL

- Section 16-1701. Noxious weeds defined.
 16-1702. Noxious weed seed.
 16-1703. Weed control and weed seed extermination districts.
 16-1704. Weed control and weed seed extermination district supervisors.
 16-1705. The board of county commissioners.
 16-1706. Permitting noxious weeds to go to seed unlawful.
 16-1707. Quarantine against introduction of noxious weed seed and farm products conveying the same.
 16-1708. Quarantine against introduction of noxious weed seed from other states.
 16-1709. Creation of weed control and weed seed extermination districts.
 16-1710. Notice of hearing.
 16-1711. Hearing on petition.
 16-1712. Weed control and weed seed extermination districts within corporate limits of cities and towns.
 16-1713. Appointment of weed control and weed seed extermination supervisors—term of office—compensation.
 16-1714. Inspection of premises—notice to occupant—possession.
 16-1715. Destruction of weeds by supervisors if notice not observed—collection of cost.
 16-1716. Destruction of weeds mingled with crop.
 16-1717. Creation of noxious weed fund by county commissioners—expenditure thereof.
 16-1718. Furnishing of materials.
 16-1719. County supervisors to control weeds and to exterminate weed seed on public highways and county owned lands in the district.
 16-1720. Commissioners shall determine cost of control and extermination of noxious weed seed and fix the amount to be paid from the noxious weed fund.
 16-1721. Cooperation with other programs.
 16-1722. Penalty for violation of act.
 16-1723. Dissolution of weed control and weed seed extermination district.

16-1701. Noxious weeds defined. The Canadian thistle (*cirsium arvense* (L.) Scop.), wild morning glory or bindweed (*convulvulus arvensis* L.) white top (*lepidium draba* L.), leafy spurge (*euphorbia virgata* waldst. and kit.), Russian knapweed (*centaurea pieris pallas.*), and such other weed or weeds as may be defined and designated as a noxious weed by the board of county commissioners of each county, is hereby declared to be a noxious weed and a common nuisance. Such noxious weeds are hereinafter referred to as "weeds."

History: En. Sec. 1, Ch. 195, L. 1939.

Cross-Reference

NOTE.—Earlier acts relative to noxious weeds were Secs. 4506 to 4513.2, R. C. M. 1935 as amended by Ch. 41, Laws 1937.

Power of cities to exterminate weeds, sec. 11-985.

16-1702. Noxious weed seed. The seed of any noxious weed is hereby declared a common nuisance. Such noxious weed seed is hereinafter referred to as "seed" or "seeds."

History: En. Sec. 1, Ch. 195, L. 1939.

16-1703. Weed control and weed seed extermination districts. The area included within the boundaries of any organized weed control and weed seed extermination district shall hereinafter be referred to as the "district."

History: En. Sec. 1, Ch. 195, L. 1939.

16-1704. Weed control and weed seed extermination district supervisors. The three persons appointed by the board of county commissioners to supervise the weed control and weed seed extermination within the county shall be referred to as the "supervisors."

History: En. Sec. 1, Ch. 195, L. 1939.

16-1705. The board of county commissioners. The board of county commissioners shall be referred to as the "commissioners."

History: En. Sec. 1, Ch. 195, L. 1939.

16-1706. Permitting noxious weeds to go to seed unlawful. It shall be unlawful to permit any noxious weed, as named in this act, or designated by the board of county commissioners of the respective county, to go to seed on any lands within the area of any district. This section shall apply to all persons, co-partnerships, corporations or companies owning, occupying or controlling lands, easements, or right-of-ways, as well as all county, state and federal owned and controlled highways, and also all drainage and irrigation ditches, spoil banks, barrow pits and right-of-ways for canals and laterals within the district.

History: En. Sec. 2, Ch. 195, L. 1939.

Collateral References

Agriculture 8.

3 C.J.S. Agriculture § 24.

16-1707. Quarantine against introduction of noxious weed seed and farm products conveying the same. Whenever the supervisors have reason to believe that farm products, including seed, which will cause the spread of noxious weeds, are about to be introduced into the county, the said supervisors shall declare an embargo against the importation of such farm products and seeds into such county.

History: En. Sec. 3, Ch. 195, L. 1939.

16-1708. Quarantine against introduction of noxious weed seed from other states. Whenever the governor of the state has good reason to believe that shipments of grain, plants, seed, tubers, nursery stock or fruit containing noxious weed seed or plants dangerous or inimical to the horticultural or agricultural industries are about to be introduced into the state, he shall, by proclamation, declare an embargo against the importation or shipment of any such grain, plants, tubers, nursery stock, seed or fruit into the state except under such restrictions as he, after consulting the commissioner of agriculture, may deem proper.

History: En. Sec. 4, Ch. 195, L. 1939.

16-1709. Creation of weed control and weed seed extermination districts. When a petition signed by twenty-five per cent (25%) of the freeholders of any proposed district, outside of any incorporated town or city of the county, is presented to the commissioners of such county, asking for the creation of a weed control and weed seed extermination district, the commissioners shall set a day for a hearing of the same and order notice thereof to be given to all persons interested as hereinafter provided. Said petition shall set forth the boundaries of the proposed district, the approximate number of acres in the proposed district, and shall contain a list of all known land owners within the proposed district, together with the addresses of such land owners, if known.

History: En. Sec. 5, Ch. 195, L. 1939; destruction of weeds and the like. 34 ALR
amd. Sec. 1, Ch. 59, L. 1951. 2d 1210.

Collateral References

Tort liability of municipality or other governmental unit in connection with the

16-1710. Notice of hearing. Notice of such hearing shall be mailed to each landowner within the proposed district at his last known address. Either the address of the landowner as set forth in the conveyance by which he secured title, provided such conveyance contains his address, or the address of the landowner as it appears on the last completed assessment roll within the county, shall be deemed his last known address, unless by affidavit it shall appear that the landowner has another address. If no known address appears, service shall be deemed complete upon publication as hereinafter provided for. Such notice shall also be posted in three public places within the district and be published in the newspaper published nearest the district for two weekly issues, and such posting, mailing and first publication shall be at least ten (10) days before the date of hearing.

History: En. Sec. 6, Ch. 195, L. 1939;
amd. Sec. 1, Ch. 60, L. 1951.

16-1711. Hearing on petition. At such a hearing, any landowner may file his written objections to the creation of the district. If landowners, owning fifty-one per cent (51%) of the agricultural land within the district, shall file written consent for the creation of the district, the commissioners shall proceed to hear the said petition, and they shall by an order duly made and entered on their minutes, declare the district created, setting forth the name and boundaries of the district and the land contained therein.

Said district or districts may be enlarged to include adjacent land by a petition signed by the owners of fifty-one per cent (51%) of the agricultural land lying within the proposed enlargement, provided that where state agricultural lands are within the boundaries of such a proposed district or proposed enlargement and it is necessary to count such state agricultural lands in obtaining the fifty-one per cent (51%) of such agricultural land, the petition may be presented to the state board of land commissioners and they may request the state land commissioner to sign the petition for the said state agricultural land, including the same within such a district; provided, however, that no assessment of tax or levy of a tax shall be made, or

any lien for any taxes shall ever accrue against such lands for any purpose whatever in connection with any district created for the control of noxious weeds and weed seed extermination.

History: En. Sec. 7, Ch. 195, L. 1939;
amd. Sec. 1, Ch. 228, L. 1947.

16-1712. Weed control and weed seed extermination districts within corporate limits of cities and towns. Twenty-five landowners within the incorporated limits of any city or town may present a like petition to the council of said city or town, and the said city or town council shall have authority to create weed control and weed seed extermination districts within the city or town in like manner as herein provided for in the creation of weed control and weed seed extermination districts within the county.

History: En. Sec. 8, Ch. 195, L. 1939.

16-1713. Appointment of weed control and weed seed extermination supervisors—term of office—compensation. The commissioners shall appoint for each county in which a city, town, or county weed control and weed seed extermination district is created, a board of weed control and weed seed extermination supervisors, upon the creation of the first district, consisting of three members, who are owners of agricultural land within a district. They shall be appointed for a period of one, two, three (1, 2, 3) years, respectively, dating from the preceding July, and thereafter an appointment or reappointment shall be made annually for a period of three (3) years, with said appointment being made at the July meeting of the board of county commissioners. Said supervisors shall be public officers, and they shall organize by choosing a chairman and a secretary. The secretary may or may not be a member of the board. All such supervisors shall serve without pay, except expenses for mileage, at five cents (5c) a mile and five dollars (\$5.00) per diem. The supervisors may employ suitable and competent persons as assistants and employees as may be necessary and provide for their compensation. It shall be the duties of said supervisors to supervise within their county the control program.

History: En. Sec. 9, Ch. 195, L. 1939;
amd. Sec. 1, Ch. 90, L. 1941; amd. Sec. 2,
Ch. 228, L. 1947.

16-1714. Inspection of premises — notice to occupant — possession. Where complaint has been made and the supervisors have reason to believe that noxious weeds described in this act are present upon the lands within the district, in violation of the law, they shall forthwith inspect the premises, and if such weeds are found, they shall cause written notice to be served on the person permitting the same, directing him to comply with the provisions of this act, within a period of time specified in said notice.

History: En. Sec. 10, Ch. 195, L. 1939;
amd. Sec. 2, Ch. 90, L. 1941.

16-1715. Destruction of weeds by supervisors if notice not observed—collection of cost. If the notice be not obeyed within the time specified in the notice the supervisors shall forthwith institute control measures and make report thereof to the county clerk, with a verified, itemized account of their services, and expenses in so doing, and a description of the lands

involved, and shall include in said account the necessary cost and expense of chemicals, man hours of labor and equipment employed, at a rate paid, in the immediate vicinity, for labor per day and for equipment used for an eight hour day. Such expenses shall be paid by the county out of the "noxious weed fund," and unless the sum, to be repaid by the owner or occupant, is not repaid before October 15th next ensuing, the county clerk shall certify the amount thereof, with the description of the premises to be charged, and shall extend the same to the assessment list of the said county, as a special tax on said land, but if the land for any reason be exempt from general taxation, the amount of such charge may be recovered by direct claim against the lessee and collected in the same manner as personal taxes. When such taxes are collected, they shall be credited to the "noxious weed fund." It shall be the duty of the state board of land commissioners in leasing any agricultural state land to provide in such lease, that the lessee of lands so leased lying within the boundaries of any noxious weed control and weed seed extermination district shall assume and pay all assessments and taxes levied by the board of county commissioners for such district on such state lands, and such assessments and tax levy shall be imposed on such lessee as a personal property tax and shall be collected by the county treasurer in the same manner as regular personal property taxes are collected. All such state lessees shall be required under the terms of such lease to pay such assessment and tax levy at the same time and manner as other regular personal taxes are paid. In effectively controlling such weeds, the supervisors are authorized to take possession and control of any infested tract of land, within their districts, together with any fences or ditches thereon, and to move any fence or ditch where necessary in order to better conduct the control work. If any fence or ditch be moved, the same shall be replaced upon completion of the control work, if requested by the landowner.

In determining what lands shall be included as land covered by the special tax herein and which shall be described in the said certificate of the county clerk, it shall be presumed that all work done upon any of the land of any one landowner shall be for the benefit of all of the land within the district, then, at the time such work was done, belonging to such owner which was contiguous to or joining the piece or parcel upon which such work was done, together with the piece or parcel upon which such work was so done, and the amount so certified shall so become a tax upon the whole thereof.

History: En. Sec. 11, Ch. 195, L. 1939;
amd. Sec. 3, Ch. 90, L. 1941; amd. Sec. 3,
Ch. 228, L. 1947.

16-1716. Destruction of weeds mingled with crop. When in the opinion of the supervisors noxious weeds are intermixed with a growing crop within the district, so that the field is a menace to the district, the supervisors shall have power to order the destruction of the same or such parts thereof as may be necessary. The supervisors may go upon the land infested with the noxious weeds for any purpose necessary to such enforcement, provided, however, that it shall be the duty of the supervisors to confer with the commissioners as a board of arbitration, who, when they deem it proper,

may extend for one year the order for destruction of the crop containing the noxious weeds.

History: En. Sec. 12, Ch. 195, L. 1939;
amd. Sec. 4, Ch. 228, L. 1947.

16-1717. Creation of noxious weed fund by county commissioners—expenditure thereof. The board of county commissioners of any county in this state may create a noxious weed control and weed seed extermination fund, either by appropriating money from the general fund of the county, or at any time fixed by law for levy and assessment of taxes, levy a tax not exceeding two (2) mills on the dollar of total taxable valuation in such county, the proceeds of which shall be used solely for the purpose of promoting the control of noxious weeds or extermination of weed seed in said county and shall be designated to “noxious weed fund” and any proceeds from work or chemical sales shall revert to the noxious weed fund and shall be available for re-use within the fiscal year. This fund shall be kept separate and distinct by the county treasurer, and shall be expended by the commissioners at such time, and such manner, as is by said supervisors deemed best to secure the control and extermination of noxious weeds and weed seed. Warrants upon such fund shall be drawn by the supervisors, provided that no warrants shall be drawn except upon claims duly itemized by the claimant, except pay roll claims which shall be itemized and certified by the supervisors, each such claim shall be presented to board of county commissioners for its approval before the warrant therefor shall be countersigned by the commissioners.

History: En. Sec. 13, Ch. 195, L. 1939; Ch. 228, L. 1947; amd. Sec. 1, Ch. 63, L. 1955.
amd. Sec. 4, Ch. 90, L. 1941; amd. Sec. 7, 1955.

16-1718. Furnishing of materials. The supervisors shall have authority to purchase such chemical, material, and equipment as they determine necessary for carrying on an effective control program. Such materials shall be paid for out of the “noxious weed fund.” The supervisors shall also determine what chemical, material, or equipment which they may have on hand, shall be made available for distribution to landowners who may wish to control weeds on their own land. The cost for same shall be charged against the said landowner and his land, and collected for as is provided for in this act.

History: En. Sec. 14, Ch. 195, L. 1939;
amd. Sec. 5, Ch. 228, L. 1947.

16-1719. County supervisors to control weeds and to exterminate weed seed on public highways and county owned lands in the district. It shall be the duty of the supervisors to control noxious weeds on the highways and county owned land within the confines of the district. The total cost of such control shall be paid from the “noxious weed fund.” Provided that the cost of controlling such weeds growing along the right of way of a state or federal highway shall upon the presentation by the supervisors of a verified account of the expenses incurred, be paid from the state highway fund.

History: En. Sec. 15, Ch. 195, L. 1939;
amd. Sec. 5, Ch. 90, L. 1941; amd. Sec. 6,
Ch. 228, L. 1947.

16-1720. Commissioners shall determine cost of control and extermination of noxious weed seed and fix the amount to be paid from the noxious weed fund. The commissioners shall determine and fix the cost of the control of noxious weeds and of extermination of noxious weed seed in weed districts whether the same be performed by the individual landowners or by the supervisors. If in the judgment of the commissioners and supervisors it seems advisable they may agree to assist the landowners in said district with a part of the cost of weed control on their land. If this is to be done then in cases where the landowner controls the weeds and exterminates the weed seed he shall present to the supervisors a duly verified claim for one-third of such cost, and when the same has been approved by the supervisors and commissioners it shall be paid to such landowner out of the "noxious weed fund." When the supervisors do the control and extermination provided for herein weed districts, one-third of the cost thereof shall be paid out of the "noxious weed fund," and the remaining two-thirds shall be charged against the land upon which weed control and weed seed extermination was had, and such two-thirds shall be repaid or collected in the manner hereinbefore provided for.

History: En. Sec. 16, Ch. 195, L. 1939; amd. Sec. 6, Ch. 90, L. 1941; amd. Sec. 8, Ch. 228, L. 1947.

16-1721. Cooperation with other programs. The supervisors are empowered to cooperate with any state or federal aid program that becomes available. Under such a plan of cooperation the direction of the program shall be under the direct supervision of the supervisors of the county in which the program operates.

History: En. Sec. 17, Ch. 195, L. 1939; amd. Sec. 9, Ch. 228, L. 1947.

16-1722. Penalty for violation of act. Any person who in any manner interferes with the weed control commissioners, weed supervisor or his deputies and employees in carrying out the provisions of this act, or refuses to obey an order of the supervisors, shall be guilty of a misdemeanor and upon conviction thereof, he shall be fined not to exceed a sum of one hundred dollars (\$100.00). All fines, bonds and penalties collected under the provisions of this act shall be paid to the county treasurer of each county, and by him placed to the credit of the fund to be known as the "noxious weed fund."

History: En. Sec. 18, Ch. 195, L. 1939.

16-1723. Dissolution of weed control and weed seed extermination district. When a petition signed by thirty-five per cent (35%) of the landowners residing within any weed control and weed seed extermination district shall be presented to the board of county commissioners of the county wherein such district is situated, requesting the dissolution of such district, the commissioners shall set a day for a hearing upon such petition and shall cause notice of the time and place thereof to be given by posting notices in not less than three (3) public places in said district and by publication in two (2) weekly issues of the newspaper published nearest the district. All persons owning lands within said district and all other persons having any interests which would be affected by the

dissolution of such district shall be entitled to be heard at such hearing, and upon such hearing the board of county commissioners shall determine whether or not weed infestation within said district requires a continuance thereof, and, if said board shall find and determine that the continuance of said district is not necessary it shall dissolve said district by a resolution made and entered upon its minutes, which resolution may, in the discretion of said board, become effective at a future date to be therein specified, but not more than ninety (90) days after the adoption of such resolution; provided, however, that no district shall be so dissolved if written objection to such dissolution signed by the owners of fifty-one per cent (51%) of the agricultural land within said district is filed with the commissioners.

At the time of such dissolution of a district, the county commissioners shall dispose of any unexpended balance of moneys levied and collected under the provisions of section 16-1717 by transferring such moneys to the county general fund, and the levy provided in said section shall cease to be effective. All materials and equipment purchased by the county commissioners under the provisions of section 16-1718 shall be disposed of by sale as provided for in section 16-1009, Revised Codes of Montana of 1947, or laws amendatory thereto, and all moneys received from such sale shall be deposited with the county treasurer to the credit of the county general fund.

History: En. Sec. 1, Ch. 206, L. 1953.

struction of weeds and the like. 34 ALR 2d 1210.

Collateral References

Tort liability of municipality or other governmental unit in connection with de-

CHAPTER 18

CLAIMS AGAINST COUNTIES, COUNTY WARRANTS

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| Section | 16-1801. | County officer not to present certain claims against county. |
| | 16-1802. | Claims to be itemized and verified—time for presenting. |
| | 16-1803. | Request for bids necessary in making purchases exceeding two thousand dollars. |
| | 16-1804. | In what transactions commissioners not to be interested. |
| | 16-1805. | Claims in favor of county commissioners. |
| | 16-1806. | Payment of claims incurred in counties of the first class. |
| | 16-1807. | Account must be filed prior to session. |
| | 16-1808. | Appeals. |
| | 16-1809. | Duty of clerk on appeals. |
| | 16-1810. | Warrants—specification—presentation and payment. |
| | 16-1811. | Annual examination of warrants by board. |

16-1801. (4604) County officer not to present certain claims against county. No county officer must, except for his own service, present any claim, account, or demand for allowance against the county, nor in any way advocate the relief asked on the claim or demand made by another. Any citizen and taxpayer of the county in which he resides may appear before the board and oppose the allowance of any claim or demand made against the county.

History: En. Sec. 4285, Pol. C. 1895; re-en. Sec. 2944, Rev. C. 1907; re-en. Sec. 4604, R. C. M. 1921. Cal. Pol. C. Sec. 4071.

Operation and Effect

While mere benefits received will not ordinarily create an implied promise to pay, where a county (or other municipal corporation) is required by law to furnish one of its officers with the necessary equipment for the performance of his duties, and it does not do so but knowingly permits him to use his own equipment, receiving benefits therefrom, it is liable for the reasonable value of its use as upon an implied contract. *Hicks v. Stillwater County*, 84 M 38, 42 et seq., 274 P 296.

Id. This section, providing that a county officer must not present any claim against the county, except for his own services, nor aid another in procuring allowance of a demand against the county, does not bar an officer from presenting a valid claim against the county, such as the one above

16-1802. (4605) Claims to be itemized and verified—time for presenting. No account must be allowed by the board unless the same is made out in separate items, the nature of each item stated, and is verified by affidavit showing that the account is just and wholly unpaid; and if it is for official services for which no specified fees are fixed by law, the time actually and necessarily devoted to such service must be stated. Every claim against the county must be presented within a year after the last item accrued.

History: Ap. p. Sec. 23, p. 503, Bannack Stat.; re-en. Sec. 23, p. 437, Cod. Stat. 1871; amd. Sec. 1, p. 63, L. 1874; re-en. Sec. 357, 5th Div. Rev. Stat. 1879; re-en. Sec. 762, 5th Div. Comp. Stat. 1887; amd. Sec. 4286, Pol. C. 1895; re-en. Sec. 2945, Rev. C. 1907; re-en. Sec. 4605, R. C. M. 1921. Cal. Pol. C. Sec. 4072.

Cross-Reference

Claims against counties, time for commencing actions, sec. 93-2609.

Pleading

A complaint in an action against a county to recover witness fees, which failed to allege that the claim had been presented under oath to the county, in separate items, with the nature of each item stated, was held to be defective. *First Nat. Bank v. Custer County*, 7 M 464, 472, 17 P 551.

The presentation of a claim to the board of county commissioners is a condition precedent to the commencement of an action against the county for its recovery. *Powder River Cattle Co. v. Commrs. of Custer County*, 9 M 145, 152, 22 P 383; *Greeley v. Cascade County*, 22 M 580, 588, 57 P 274. See also *First Nat. Bank of Billings v. Custer County*, 7 M 464, 472, 17 P 551.

referred to, the provision being merely intended to bar the officer from championing the claims of third persons.

References

Kalman v. Treasure County et al., 84 M 285, 288, 275 P 743.

Collateral References

Counties—203.

20 C.J.S. Counties § 299.

14 Am. Jur. 229, Counties, §§ 67 et seq.

Liability of county for mob or riot. 13 ALR 751.

Necessity of presenting claim against municipality for damaging property. 52 ALR 639.

Acceptance of amount appropriated on account of claim against state or other public body as bar to balance of claim. 70 ALR 1208.

Power of county or its officials to compromise claims. 105 ALR 170.

What Is a Claim Against the County

A claim against a county for the repayment of taxes paid under protest was an "account" within the meaning of a section similar to the above. *Powder River Cattle Co. v. Commrs. of Custer County*, 9 M 145, 152, 153, 22 P 383.

A section similar to the above was held not to apply to the claim of a surveyor for services performed by virtue of his employment under the terms of a special act creating a boundary commission for the survey of the boundaries of certain counties, and empowering such commission to ascertain the expenses incurred in such survey, and to certify to and file with the county clerks of their respective counties the amount thereof. *Kornburg v. Commrs. of Deer Lodge Co.*, 10 M 325, 329, 25 P 1041.

A person who serves as a member of a sheriff's posse in obedience to a law requiring him to do so, cannot recover from the county for expenses or services rendered, in the absence of an express or implied provision of law authorizing payment therefor. *Sears v. Gallatin County*, 20 M 462, 465, 52 P 204. See *State ex rel. McGrade v. District Court*, 52 M 371, 376, 157 P 1157.

The subject-matter of an action against a county by which it was sought to obtain

compensation for land taken for road purposes under an agreement, the consideration for which failed, is not a "claim" against the county, within the meaning of this section, an action on which is barred if not brought within one year after its accrual. *Flynn v. Beaverhead County*, 54 M 309, 314, 170 P 13.

A claim against the county within the meaning of this section the presentation of which to the board of county commissioners is a condition precedent of an action for its recovery, does not comprehend a claim by a school district for its proportion of interest and penalties retained by the county on redemption of property from tax sale, it presenting a question of the law dependent upon the meaning of statutes, thus leaving no room for the exercise of discretion lodged in the board in passing upon the average claim presented for allowance. *School Dist. No. 12 v. Pondera Co.*, 89 M 342, 351, 297 P 498.

Where Limitation Not Applicable To Amended Claim

Where a sheriff's claims during two terms in office had been approved by the

commissioners for mileage at the rate of seven and eight and a half cents per mile, and after retiring from office he presented additional claims for the difference between those rates and ten cents per mile under section 16-2723, he was not required to present the latter claims within a year after the last claim accrued, under this section, they having amounted to amendments of the original claims the merits of which had been passed upon by the board before approval. *Weir v. Silver Bow County*, 113 M 237, 241, 124 P 2d 1003.

References

Cited or applied as section 2945, Revised Codes, in *State v. Story*, 53 M 573, 582, 165 P 748; *State ex rel. Dolin v. Major*, 58 M 140, 146, 192 P 618; *Manley v. Harer et al.*, 73 M 253, 263, 235 P 757; *Kalman v. Treasure County et al.*, 84 M 285, 288, 275 P 743; *Good Roads Machinery Co. v. Broadwater Co.*, 94 M 68, 70, 20 P 2d 834.

Collateral References

Counties—201, 202.
20 C.J.S. *Counties* §§ 300, 301.
14 Am. Jur. 229, *Counties*, §§ 67 et seq.

16-1803. (4605.1) Request for bids necessary in making purchases exceeding two thousand dollars. (1) No contract shall be entered into between a board of county commissioners for the purchase of any automobile, truck, or other vehicle, or road machinery, or for any other machinery, apparatus, appliances or equipment, or for any materials or supplies of any kind, for which must be paid a sum in excess of two thousand dollars (\$2,000.00) without first publishing a notice calling for bids for furnishing the same, which notice must be published at least once a week, for three (3) consecutive weeks before the date fixed therein for receiving bids, in the official newspaper of the county, and every such contract shall be let to the lowest and best responsible bidder; provided that the provisions of this section shall not apply to contracts for public printing entered into in accordance with the provisions of chapter 12 of title 16 and provided further, that the provisions of this section shall not apply to contracts for purchases, which in the opinion of the board, are made necessary by fires, flood, explosion, storm, earthquake, or other elements, epidemic, riot, insurrection, or for the immediate preservation of order, or of the public health, or for the restoration of a condition of usefulness which has been destroyed by accident, wear, tear, mischief, or for the relief of a stricken community overtaken by calamity.

(2) When the amount to be paid as the purchase price for any automobile, truck, or other vehicle, or road machinery of any kind, or for any other machinery, apparatus, appliance or equipment, or for any materials or supplies of any kind, shall exceed one thousand dollars (\$1,000.00) the board of county commissioners may provide for the payment of such purchase price in installments extending over a period of not more than three (3) years; provided that when the purchase price is extended over a term of two (2) years or at least forty (40%) per cent thereof shall be

paid the first year and the remainder the second year and when such purchase price is extended over a term of three (3) years at least one-third of such purchase price to be paid each year; provided that, at the time of entering into the agreement for such purchase, there shall be an unexpended balance of appropriation in the budget for the then current fiscal year available and sufficient to meet and take care of such portion of the purchase price as is payable during the then current fiscal year, and the budget for each following year, in which any portion of such purchase price is to be paid, shall contain an appropriation for the purpose of paying the same.

(3) Every contract entered into for the rental of machinery, equipment, apparatus, appliances, materials or supplies of any kind, which shall provide for payment of rental, by the county, and that after a certain fixed amount has been paid as rental, the property shall become the property of the county, or any other similar provisions or conditions, shall be deemed and construed to be a contract for sale of such property, and all of the provisions of this section shall apply thereto and govern and control the same.

History: En. Sec. 1, Ch. 8, L. 1933; amd. Sec. 1, Ch. 87, L. 1935; amd. Sec. 1, Ch. 42, L. 1941; amd. Sec. 1, Ch. 128, L. 1951.

Cross-Reference

Public bidders required to furnish security, sec. 6-501.

Construction

Under the rules that specific legislation is not affected by general legislation unless the general is so repugnant to the special that legislative repeal or modification must be presumed, and where general words follow particular subjects, they include only things of same general character, held, that words "or supplies of any kind" found in this section, relate to the things immediately preceding them, i. e. automobiles, trucks or other vehicles, machinery, equipment or materials used in connection with them, and not to county printing. State ex rel. Bowler v. Board of County Commrs. of Daniels County, 106 M 251, 256, 257, 76 P 2d 648.

No Application To Letting Contracts for County Printing

This section has no application to the

letting of contracts for county printing, that subject being specifically covered by sections 4482 et seq., R. C. M. 1935 (since repealed). State ex rel. Bowler v. Board of County Commrs. of Daniels County, 106 M 251, 255, 76 P 2d 648.

References

Shaw v. Kendall, 114 M 323, 327, 136 P 2d 748.

Collateral References

Counties—116.
20 C.J.S. Counties § 183.
14 Am. Jur. 209, Counties, §§ 39 et seq.

Bidder's variation from specifications on bid for public work. 65 ALR 835.

Power of board to make contract extending beyond its own term. 70 ALR 794.

Mandamus to compel consideration, acceptance, or rejection of bids for public contracts. 80 ALR 1382.

What is covered by term "work" in statute relating to bids or proposals for public contracts. 92 ALR 835.

16-1804. (4606) In what transactions commissioners not to be interested. No member of the board must be interested, directly or indirectly, in any property purchased for the use of the county, nor in any purchase or sale of property belonging to the county, nor in any contract made by the board or other person on behalf of the county, for the erection of public buildings, the opening or improvement of roads, or the building of bridges, or the purchasing of supplies, or for any other purpose.

History: En. Sec. 4292, Pol. C. 1895; re-en. Sec. 2951, Rev. C. 1907; re-en. Sec. 4606, R. C. M. 1921. Cal. Pol. C. Sec. 4077.

Collateral References

Counties—113(1).
20 C.J.S. Counties § 175.

14 Am. Jur. 211, Counties, § 42.

Relation as creditor of contracting party as constituting interest within statute against public officer being interested in public contract. 73 ALR 1352.

Relationship as disqualifying interest within statute making it unlawful for an

officer to be interested in a public contract. 74 ALR 792.

Interest of public officer in contract as affecting liability under implied contract for value of property or work. 84 ALR 969.

16-1805. (4607) Claims in favor of county commissioners. All claims against the county presented by members of the board for per diem and mileage, or other service rendered by them, must be verified as other claims, and must state that the service has been actually rendered.

History: En. Sec. 4293, Pol. C. 1895; re-en. Sec. 2952, Rev. C. 1907; re-en. Sec. 4607, R. C. M. 1921. Cal. Pol. C. Sec. 4082.

Operation and Effect

This section is a mere prescription, touching the manner in which commissioners' claims for compensation shall be formulated, and is designed in connection with section 16-1802 to enable the board

to determine in the first instance whether it will even consider the claim. The effect of the section is not to authorize compensation to county commissioners, for attending to business of the county other than meetings of the board, and inspecting and overseeing road work, without a previous order of the board, charges for which services are otherwise illegal. *State v. Story*, 53 M 573, 582, 583, 165 P 748.

16-1806. (4608) Payment of claims incurred in counties of the first class. The board of county commissioners in any county of the first class may, in its discretion, allow any claims for services rendered or labor performed for or on behalf of the county by any person at the request of any county officer, whether or not such county officer was empowered or authorized to secure, obtain, or contract for the rendition of any such service rendered or labor performed, where the person holding such claim has presented the same in due time in the manner provided by law, prior to the passage of this act; provided, that such claims shall not exceed the sum of two hundred and fifty dollars for any one year.

History: En. Sec. 1, Ch. 88, L. 1911; re-en. Sec. 4608, R. C. M. 1921.

Collateral References

Counties⇒204(1).
20 C.J.S. Counties § 305.
14 Am. Jur. 233, Counties, § 72.

16-1807. (4609) Account must be filed prior to session. No account must be necessarily passed upon by the board, unless made out as prescribed in the preceding section and filed by the clerk prior to the session at which it is asked to be heard.

History: En. Sec. 4287, Pol. C. 1895; re-en. Sec. 2946, Rev. C. 1907; re-en. Sec. 4609, R. C. M. 1921. Cal. Pol. C. Sec. 4073.

Collateral References

Counties⇒203.
20 C.J.S. Counties § 299.

16-1808. (4610) Appeals. Whenever a claim against a county is disallowed in whole or in part, or when any taxpayer of the county is not satisfied with any allowance made by the board, the claimant or such taxpayer may appeal from the decision of the board to the district court for the county, by causing a written notice of appeal to be served on the clerk of the board, within thirty days after the making of the decision or allowance, and executing a bond to the county, with surety to be approved by the clerk of the board, conditioned to prosecute such appeal to effect and to pay all costs that may be adjudged against the appellant.

History: Ap. p. Sec. 25, p. 503, Bannack 1871; amd. Sec. 2, p. 63, L. 1874; re-en. Stat.; re-en. Sec. 25, p. 437, Cod. Stat. Sec. 359, 5th Div. Rev. Stat. 1879; re-en.

Sec. 764, 5th Div. Comp. Stat. 1887; amd. Sec. 4288, Pol. C. 1895; re-en. Sec. 2947, Rev. C. 1907; re-en. Sec. 4610, R. C. M. 1921. Cal. Pol. C. Sec. 4075.

Appeal of Portion of Allowance

An appeal may be taken by a taxpayer from one or more items of a claim against the county allowed by the commissioners, without appealing from the whole of the allowance. *Twohy v. Board of Comms. of Granite County*, 17 M 461, 464, 43 P 494.

Board Must Allow or Disallow Claims Against County

When the auditor has disapproved a claim, the board must disallow it so that the claimant may proceed to enforce it against the county by appeal to the district court. *State ex rel. Dolin v. Major*, 58 M 140, 151, 192 P 618.

Effect of Failure to Appeal

Failure of a taxpayer to appeal to the district court from an order of the board of county commissioners allowing a claim against the county under the authority given him by this section does not limit the right of the county attorney to sue in the name of the county to recover moneys illegally paid under section 16-3103. *Carbon County v. Draper*, 84 M 413, 418, 419, 276 P 667.

Independent Action on Claim

A claimant against the county has the right to maintain an independent action on a claim rejected by the board of commissioners in view of section 93-2609. *Greeley v. Cascade County*, 22 M 580, 586, 57 P 274.

Judgment on Appeal

Where a taxpayer took an appeal to the district court from an allowance by a board of county commissioners of a claim against a county under a statute similar to the above, and thereafter a judgment by default was rendered by such court upon the failure of the board to appear, adjudging such claim illegal and setting aside the allowance of the same, without a trial or inquiry of any character respecting its merits, such judgment was unauthorized and constituted no defense to an application for a writ of mandamus to compel the payment by the county treasurer of a warrant issued in payment of such claim. *State ex rel. Cope v. Minar*, 13 M 1, 4, 31 P 723.

Notice on Appeal

Where an appeal was taken by a taxpayer from the allowance by the commissioners of a bill against the county, and a notice of appeal was served upon the

county clerk, and the clerk thereupon transmitted the proceedings in the case, with the copy of the notice of appeal, to the district court, all of which was done under statutes similar to those now in force, it was held that the clerk thereby waived any irregularity or insufficiency of the service of the notice. *Twohy v. Board of Comms. of Granite County*, 17 M 461, 463, 43 P 494.

Id. On an appeal by a taxpayer from the allowance by the commissioners of a claim against the county under a similar statute, service of the notice of appeal upon the claimant whose bill was allowed was not considered necessary to give the district court jurisdiction, but it was the duty of the court, after acquiring jurisdiction, to give the claimant notice of the pendency of the case and an opportunity to be heard before rendering judgment.

Parties

In the case of claims against counties, the claimant, or the objecting taxpayer, and the county are the real parties in interest, and therefore adversary parties. *State ex rel. Hackshaw v. District Court*, 48 M 477, 480, 138 P 1100.

On appeal from an order of the board of county commissioners allowing or disallowing a claim under this and the following section, the parties are the county and the claimant, or, in a taxpayer's suit, the county and the objecting taxpayer. *Albers v. Barnett*, 53 M 71, 79, 161 P 518.

Record on Appeal

Where an appeal from an order of the board of county commissioners disallowing a claim against the county was submitted to the district court without a hearing, resulting in a reversal of the order, the contention of the county attorney made on appeal from the court's order declining to set aside its decision on the ground of inadvertence and mistake based on the assertion that the clerk of the board had failed to lodge with the court a copy of the board's record in the case, held not sustained, it being apparent that to arrive at its decision the court must have impliedly found that the proper record was before it. *Huntington v. Yellowstone County*, 80 M 20, 23, 257 P 1041.

References

Cited or applied as section 4288, Political Code, in Independent Publishing Co. v. County of Lewis and Clark, 30 M 83, 84, 75 P 860; as section 2947, Revised Codes, in *State ex rel. Hackshaw v. District Court*, 48 M 477, 480, 138 P 1100; *Thien v. Wiltse*, 49 M 189, 194, 141 P 146; *State ex rel. Lockwood v. Tyler*, 64 M 124, 131, 208 P 1081; *Yancey v. Park County*, 111 M 73, 75, 106 P 2d 349.

Collateral References
 Counties—205(3, 4).

20 C.J.S. Counties §§ 310, 311.
 14 Am. Jur. 232, Counties, § 71.

16-1809. (4611) Duty of clerk on appeals. The clerk of the board, upon an appeal being taken, must immediately give notice thereof to the county attorney and must make out a return of the proceedings in the matter before the board, with its decision thereon, and file the same, together with the bond and all the papers therein in his possession, with the clerk of the district court; and such appeal must be entered, tried, and determined the same as appeals from justices' courts, and costs are awarded in like manner.

History: Ap. p. Sec. 26, p. 504, Bannack Stat.; re-en. Sec. 26, p. 437, Cod. Stat. 1871; re-en. Sec. 360, 5th Div. Rev. Stat. 1879; re-en. Sec. 765, 5th Div. Comp. Stat. 1887; amd. Sec. 4289, Pol. C. 1895; re-en. Sec. 2948, Rev. C. 1907; re-en. Sec. 4611, R. C. M. 1921.

Appeals, How Tried

Appeals from actions of boards of county commissioners are prosecuted and tried like appeals from a justice of the peace. State ex rel. Seres v. District Court, 19 M 501, 504, 48 P 1104.

The language of the last clause of this section can mean no more than that the court may try de novo the question whether the action of the board in its allowance or disallowance was correct, and so declare. The board is not a court, and its action is not tantamount to a judgment. Its refusal to allow a claim is not conclusive, even though the claimant does not appeal. Greeley v. Cascade County, 22 M 580, 586, 57 P 274; Albers v. Barnett, 53 M 71, 80, 161 P 518.

Appeals from orders of the board of county commissioners disallowing claims against a county must, under this section, be tried and determined as appeals from justices' courts, i. e., they must be tried de novo (secs. 93-7902 and 93-7907). Yan-

cey v. Park County, 111 M 73, 76, 106 P 2d 349.

Jurisdiction on Appeal

The jurisdiction of the district court on appeal from an order made by county commissioners allowing or disallowing a claim against the county is limited to the determination of the question whether the action of the board was correct and to a declaration affirming or reversing it, with a judgment for costs. Albers v. Barnett, 53 M 71, 80, 161 P 518.

Waiver of Notice

By denying a county attorney's motion to set aside its decision reversing an order of the board of county commissioners disallowing a claim against the county, asked for on the ground of inadvertence and mistake in that the clerk of the board had failed to give him notice of the appeal as required by this section the court impliedly found as contended by respondent, that the county attorney had waived notice by agreeing to a submission of the cause without hearing or argument, and in denying the motion it did not abuse the discretion lodged in it by section 93-3905. Huntington v. Yellowstone County, 80 M 20, 23, 257 P 1041.

16-1810. (4612) Warrants—specification—presentation and payment. Warrants drawn by order of the board on the county treasurer for the current expenses during each year must specify the liability for which they are drawn and when they accrued, and must be paid in the order of presentation to the treasurer. If the fund is insufficient to pay any warrant, it must be registered and thereafter paid in the order of its registration.

History: En. Sec. 4290, Pol. C. 1895; re-en. Sec. 2949, Rev. C. 1907; re-en. Sec. 4612, R. C. M. 1921. Cal. Pol. C. Sec. 4076.

Operation and Effect

An action cannot be maintained against a county on a county warrant. Greeley v. Cascade County, 22 M 580, 588, 57 P 274.

References

State v. District Court et al., 62 M 275, 281, 204 P 600; State ex rel. Case v. Bolles et al., 74 M 54, 65, 238 P 586.

Collateral References

Counties—165, 168(3).
 20 C.J.S. Counties §§ 249, 254.
 14 Am. Jur. 233, Counties, §§ 73 et seq.

16-1811. (4613) Annual examination of warrants by board. The board, at its annual March session, or oftener if necessary, must examine the county

warrants returned by the county treasurer, by comparing each warrant with the record of warrants issued in the county clerk's office. The board must cause to be entered on said record, opposite to the entry of each warrant issued, the date when the same was canceled; and make a list of the warrants so canceled, specifying the number, date, amount, and the person to whom the same was payable, and entered the same on the minutes of the board. The board must cause to be canceled all county warrants that have remained one year or more uncalled for in the county clerk's office, the same to be canceled in the same manner as other county warrants. At the same time the county treasurer must deliver to the board all warrants or vouchers that he may have in his possession for moneys disbursed by him as treasurer, and the clerk must receipt for the same.

History: Ap. p. Sec. 28, p. 504, Bannack Stat.; amd. Sec. 28, p. 438, Cod. Stat. 1871; re-en. Sec. 362, 5th Div. Rev. Stat. 1879; re-en. Sec. 767, 5th Div. Comp. Stat. 1887; amd. Sec. 4291, Pol. C. 1895; re-en. Sec. 2950, Rev. C. 1907; re-en. Sec. 4613, R. C. M. 1921.

Collateral References

Counties 47.

20 C.J.S. Counties § 81.

CHAPTER 19

COUNTY BUDGET SYSTEM

- Section 16-1901. County budget—estimates by county officers of revenues and expenditures—form of estimates—penalty for failure to file.
- 16-1902. Tabulation by clerk of expenditure program—classifications—items included in.
- 16-1903. Consideration of budget by commissioners—notice of budget meeting.
- 16-1904. Hearings on budget—adoption—fixing tax levies.
- 16-1905. Budget appropriations for outstanding warrants.
- 16-1906. Appropriations—transfers among appropriations—use of borrowed money—liabilities for expenditures in excess of budget.
- 16-1907. Emergency expenditures—notice and hearings—objections by taxpayers—appeal—notice and hearing dispensed with in extreme cases—emergency warrants—tax levy—lapse of appropriations.
- 16-1908. County clerk's report of expenditures and liabilities against budget appropriations, receipts from taxes and other sources—auditor to furnish statement of liabilities for which warrants not issued.
- 16-1909. State examiner to make rules and regulations for carrying out act—accounting systems.
- 16-1910. Construction of act.
- 16-1911. Violation of act constitutes misdemeanor.

16-1901. (4613.1) County budget—estimates by county officers of revenues and expenditures—form of estimates—penalty for failure to file. On or before the first day of June of each year the county clerk and recorder of each county shall notify in writing each county official, elective or appointive, in charge of an office, department, service or institution of the county to file with such county clerk and recorder, on or before the tenth day of June following, detailed and itemized estimates, both of the probable revenues from sources other than taxation, and of all expenditures required by such office, department, service or institution for the next succeeding fiscal year. The county commissioners shall submit to the county clerk and recorder the estimate of expenditures for all purposes for such board,

and a detailed statement showing all new road and bridge construction to be financed from county road and bridge funds, any special road or bridge funds, and from any special highway fund, and from bond issues theretofore issued or authorized, if any, for the next succeeding fiscal year, together with the cost thereof as computed by the county surveyor, or if for construction in charge of a special engineer then by such engineer, and it shall be the duty of the county surveyor and any such special engineer to prepare such estimates of cost for the county commissioners. They shall also submit a similar statement showing road and bridge maintenance expenditures as nearly as can be estimated.

The county commissioners shall also submit to the county clerk and recorder detailed estimates of all expenditures for construction or improvement purposes proposed to be made from the proceeds of bond issues not yet authorized and from the proceeds of tax levies which are required to be submitted to and approved at an election to be thereafter held.

The estimates required in this section shall be submitted on forms provided by the county clerk and recorder, and prescribed by the state examiner, and may only be varied or departed from with permission and approval of said officer. The county treasurer shall prepare the estimates for interest and debt reduction. The county clerk and recorder shall prepare all other estimates the preparation of which properly falls within the duties of his office.

It shall be the duty of each of said officials to file such estimates within the time and in the manner provided in said form and notice, and the county clerk shall deduct and withhold, as a penalty, from the salary of each official failing or refusing to file such estimates as herein provided, the sum of ten dollars (\$10.00) for each day of delay; provided, however, that the total penalty against any one official shall not exceed fifty dollars (\$50.00) in any one year; and provided further, that in the absence or disability of any such official the duties required herein shall devolve upon the official or employee in charge of such office, department, service or institution for the time being. The said notice shall contain a copy of this penalty clause.

History: En. Sec. 1, Ch. 148, L. 1929; amd. Sec. 1, Ch. 48, L. 1947.

Compiler's Note

Chapter 170 of Laws 1949 was a validating act and read as follows:

An act providing for payment by certain counties of any indebtedness incurred in good faith for preservation of health and sanitation, relative to collection of garbage prior to August 1, 1948, the payment of which has not been made.

Section 1. The board of county commissioners of any county of the state of Montana having a population of thirty-five thousand (35,000) or over, having outstanding against it, indebtedness incurred in good faith and for value received prior to August 1, 1948, for preservation of health and sanitation, relative to the collection of garbage in violation of sections 4613.1 to 4613.10 [16-1901 to 16-

1911], inclusive, Revised Codes of Montana, 1935, and acts amendatory thereof, (state budget law), is hereby authorized and empowered to pay such indebtedness and discharge the obligations thereby assumed out of funds on hand, at end of fiscal year not otherwise encumbered, or out of funds raised for that purpose by direct tax levy.

Section 2. The board of county commissioners of any such county is hereby authorized and directed to pay such indebtedness in the manner prescribed by law out of the funds provided as aforesaid.

Section 3. Nothing herein contained shall be construed as authorizing a levy to be made for any fund in excess of the limitation now prescribed by existing law.

Section 4. This act shall be in full force and effect from and after its passage and approval. Approved March 2, 1949.

Cross-Reference

Fiscal year, sec. 59-701.

Consideration of Available Money in Preparing Budgets—Sinking and Interest Fund

In preparing their budgets and making their tax levies boards of county commissioners must take into consideration the amount of money already available in each fund for which a levy is made. (See also secs. 16-1902 and 16-1904.) Levy for county bond sinking and interest fund is illegal where there is sufficient money in the fund to meet the needs for the year for which the tax is levied. *Rogge v. Petroleum County*, 107 M 36, 44, 80 P 2d 380.

Levying Tax to Buy County Bonds at Discount

In the absence of express legislation authorizing boards of county commissioners to levy a tax for the purpose of raising funds with which to buy county bonds before they mature, even though they may be had at a discount, such authority does not exist. County commissioners have only such authority with reference to tax matters as the legislature sees fit to give them. *Rogge v. Petroleum County*, 107 M 36, 47, 80 P 2d 380.

Tax for Sinking Fund in Excess of Annual Need—Invalid as to Excess

A tax for sinking fund purposes in excess of the amount needed for such pur-

pose in any one year is invalid as to the excess; this rule does not require the taxing authority to levy such a rate of taxation as will produce exactly enough money for the purpose for which levied, the usual test being whether it is so grossly excessive as to constitute a constructive fraud upon the taxpayers. *Rogge v. Petroleum County*, 107 M 36, 44, 80 P 2d 380.

Taxing in Excess of Need, Illegal

It is against the policy of the law to raise taxes faster than the money is likely to be needed, and in the absence of statutory authority a tax cannot be levied for the sole purpose of accumulating funds in the public treasury, such as for remote or future contingencies which may never arise; nor can it be levied in excess of the amount required for the purpose for which it is levied, with the intention of using the excess for another purpose. *Rogge v. Petroleum County*, 107 M 36, 44, 80 P 2d 380.

References

State ex rel. Valley Center Drain District v. Board of County Commrs., 100 M 581, 588, 51 P 2d 635.

Collateral References

Counties—159.
20 C.J.S. Counties § 232.

Home rule charter as affecting supervision, review and revision of tax budget. 106 ALR 1203.

16-1902. (4613.2) Tabulation by clerk of expenditure program—classifications—items included in. From such estimates the county clerk and recorder shall prepare a tabulation showing the complete expenditure program of the county for the current fiscal year, and the sources of revenue by which it is to be financed. Such tabulation shall set forth the estimated receipts from all sources other than taxation for each office, department, service, or institution for the current fiscal year, the actual receipts for the last completed fiscal year, the surplus or unencumbered treasury balances at the close of such last fiscal year, and the amount necessary to be raised by taxation; the estimated expenditure for each office, department, service or institution for the current fiscal year, the actual expenditures for the last completed fiscal year, and all contracts or other obligations which will affect the current year revenues.

Such estimates, appropriations and expenditures shall be classified under the general classes of (1) salaries and wages; (2) maintenance and operation; (3) capital outlay; (4) interest and debt redemption; (5) miscellaneous; and (6) expenditures proposed to be made from bond issues not yet authorized, or from the proceeds of a tax levy or levies which are required to be submitted to and approved at an election to be thereafter held.

Within the general class of salaries and wages each salary shall be set forth separately together with the title or position of the recipient, provided

that an unitemized appropriation may be made to cover the expenses of special deputies or assistants in any office where the services of such special deputies or assistants may be required during a part of the fiscal year only. Wages for day labor may be given in totals by designating the general purpose or object for which the expenditure is to be made but the proposed rate per diem for each class or kind of labor shall be set forth. Expenditures under the general class of maintenance and operation shall be classified according to a standard classification to be established by the state examiner. Expenditures for capital outlay shall set forth and describe each object of expenditure separately. Under the general class of interest and debt redemption proposed expenditures for interest and for redemption of principal shall be set forth separately for each series or issue of bonds, and warrant interest and redemption requirements shall be set forth in a similar manner. Under the general class of miscellaneous, expenditures for all purposes not listed in, or which cannot properly be assigned to any of the foregoing general classes, shall be set forth and itemized in detail.

The total amount of emergency warrants issued during the preceding fiscal year shall be set forth with the amount issued for each emergency and the amount issued against each fund.

History: En. Sec. 2, Ch. 148, L. 1929.

Co. v. Phillips County, 112 M 542, 545,
118 P 2d 754.

References

Rogge v. Petroleum County, 107 M 36,
45, 80 P 2d 380; Great Northern Railway

16-1903. (4613.3) Consideration of budget by commissioners—notice of budget meeting. The said tabulation shall be submitted to the county commissioners by the county clerk and recorder on or before the first Monday of July. Upon receipt thereof the board of county commissioners shall immediately consider the same in detail, and shall on or before the second Monday of July make any revisions, reductions, additions or changes therein that they deem advisable, and such tabulation, with such revisions, reductions, additions or changes as have been made therein, as herein provided, shall constitute the preliminary budget for the fiscal year which it is intended to cover. Upon the completion of such budget, it shall be the duty of the county clerk to forthwith transmit one copy of such preliminary budget to the state examiner and one copy to the state board of equalization. The board of county commissioners shall then cause a notice to be published stating that said board has completed their preliminary county budget for the current fiscal year, and that said budget shall be placed on file and is open to inspection in the office of the county clerk and recorder, and that said board will meet on the Wednesday immediately preceding the second Monday in August thereafter, for the purpose of fixing the final budget and making appropriations, designating the time and place when and where such meeting shall be held, and that any taxpayer may appear thereat and may be heard for or against any part of said budget. Said notice shall be published at least one time in the official newspaper of the county, or if there be none, then in a newspaper of general circulation in the county.

History: En. Sec. 3, Ch. 148, L. 1929;
amd. Sec. 2, Ch. 48, L. 1947,

Remedies for Illegal Levy—Estoppel

Payment of a tax deemed illegal, under protest, and then bringing an action to recover it back is not the exclusive remedy of the taxpayer where the levy is illegal; in the instant case, where there was no need to tax to raise funds for bond and

sinking fund, plaintiff taxpayer was not estopped from maintaining action to enjoin collection by his failure to appear before the board at the time the preliminary budget was noticed for hearing under this section. *Rogge v. Petroleum County*, 107 M 36, 47, 80 P 2d 380.

16-1904. (4613.4) Hearings on budget—adoption—fixing tax levies.

(1) On the Wednesday immediately preceding the second Monday in August the county commissioners shall meet at the time and place designated in the notice provided for in section 16-1903, at which time any taxpayer may appear and be heard for or against any part of such budget. Such hearing shall be continued from day to day and shall be concluded and terminated and the budget finally approved and adopted on the second Monday in August and before the fixing of the tax levies by such board.

(2) Upon the conclusion of such hearing the board shall first determine and fix the amount which it is estimated will accrue to each fund during the fiscal year from all sources, except the taxation of property, but in so doing the board shall not include any amount which it is anticipated may be received during the fiscal year from the payment of taxes which became delinquent during any preceding fiscal year, or years. The board shall then determine and fix separately the amount appropriated for and authorized to be expended for each item in the budget and shall specify the fund or funds against which warrants are to be drawn and issued for the expenditures so authorized; provided that there shall not be added to the amount to be appropriated and authorized to be expended for any item, or to the total amount appropriated and authorized to be expended from any fund any amount or percentage whatever because of any anticipated loss of revenue by reason of the nonpayment of taxes levied for such fiscal year; and provided further that the amount appropriated and authorized to be expended for any item contained in such budget, except for capital outlay, election expenses, expenditures from county poor funds, and payment of emergency warrants and interest thereof, must not exceed by more than ten per centum (10%) the amount actually expended for such item under the appropriation contained in the budget approved and adopted for the fiscal year immediately preceding, and the total amount appropriated and authorized to be expended from any fund, except for capital outlay, election expenses and payment of emergency warrants and interest thereon, shall not exceed by more than ten per centum (10%) the total amount actually expended for all purposes, except for capital outlay, election expenses, expenditures from county poor funds, and payment of emergency warrants, from such fund under the appropriation made from such fund in the budget approved and adopted for the fiscal year immediately preceding; provided further that the foregoing limitations shall not apply to appropriations and expenditures authorized to be made from the county poor fund for payment of bonds and emergency warrants and interest thereon; and provided further that the total expenditures authorized to be made from any fund, including reserve added thereto as hereinafter provided, shall not, in any event, exceed the aggregate of the cash balance in such fund at the close of the fiscal year immediately preceding, the amount of estimated revenues to

accrue to such fund, as determined and fixed in the manner herein provided, and the amount which may be raised for such fund by a lawful tax levy during the fiscal year.

(3) The board shall then determine and fix the amount to be raised for each fund by tax levy by adding together the cash balance in the fund at the close of the fiscal year immediately preceding and the amount of the estimated revenues, if any to accrue thereto during the current fiscal year, as before ascertained and determined, and then deducting the total amount so obtained from the total amount of the appropriations and authorized expenditures from the fund as determined and fixed by said board, the amount remaining being the amount necessary to be raised for the fund by tax levy during the current fiscal year; provided that the board may add to the amount so found necessary to be raised for any fund by tax levy during the current fiscal year, an additional amount as a reserve to meet and care for expenditures to be made from such fund during the months of July to November, inclusive, of the next ensuing fiscal year under the annual budget to be thereafter adopted for such next ensuing fiscal year, but the amount which may be so added to any fund, as such reserve for such purpose, shall not exceed one-third of the total amount appropriated and authorized to be expended from such fund during the current fiscal year, after deducting from the amount of such appropriations and authorized expenditures the total amount, if any, therein appropriated and authorized to be expended for election expenses and payment of emergency warrants; provided further that the total amount, to be raised by tax levy for any fund, during such current fiscal year, including the amount of such reserve and any amount for payment of election expenses and emergency warrants, must not exceed the total amount which may be raised for such fund by a tax levy which does not exceed the maximum levy permitted by law to be made for such fund.

(4) The budget as finally determined, in addition to setting out separately each item for which any appropriation or expenditure is authorized and the fund out of which the same is to be paid, shall set out the total amount appropriated and authorized to be expended from each fund, the cash balance in the fund at the close of the last preceding fiscal year, the amount, if any, which it is estimated will accrue to the fund from sources other than taxation, the reserve, if any, for the next ensuing fiscal year, and the amount necessary to be raised for each fund by tax levy during the current fiscal year. The board shall then by resolution approve and adopt the budget as so finally determined and enter the same at length and in detail in the official minutes of the board.

(5) On the second Monday in August, and after the approval and adoption of the final budget, the board of county commissioners shall fix the tax levy for each fund at such rate as will raise the amount set out in such budget as the amount necessary to be raised by tax levy for such fund during the current fiscal year, and no more; provided, that the taxable valuation of the county for the then current fiscal year shall be the basis for determining the amount of the tax levy for each fund, and each tax levy shall be at a rate no higher than is required on such basis, without including any amount for anticipated tax delinquency, to produce the amount set out in the budget without including any amount for anticipated tax delinquency,

as being the amount to be raised by tax levy, and shall be made in the manner provided by section 84-3802.

(6) The county clerk and recorder shall, not later than the fifteenth day of September following, forward a full, complete, itemized and detailed copy of the final budget, together with the tax levies made therefor, to the state examiner. If any county clerk and recorder shall fail, refuse, or neglect to forward such copy of the budget to the state examiner within such time, the state examiner shall, before the first day of October immediately following, notify the board of county commissioners of such county that such copy of budget has not been forwarded to him by the county clerk and recorder, and such board of county commissioners must thereupon withhold from said county clerk and recorder his salary for the month of September until such time as such county clerk and recorder shall file with such board a receipt from the state examiner showing the receipt by him of such copy.

History: En. Sec. 4, Ch. 148, L. 1929; amd. Sec. 1, Ch. 98, L. 1937.

Constitutionality

Held, in a taxpayer's suit to recover taxes paid under protest, that this section prohibiting consideration of anticipated loss of revenue for nonpayment of taxes does not offend against art. III, sec. 11, Const., as impairing obligations of contracts, since the budget act (secs. 16-1901 to 16-1911) contemplates issuances of

interest-bearing registered warrants, under sections 16-2002 and 16-2604, up to budget appropriation, if there be no money in a particular fund, which must be taken into consideration in fixing the budget for the succeeding year. *Great Northern Railway Co. v. Phillips County*, 112 M 542, 544, 118 P 2d 754.

References

Rogge v. Petroleum County, 107 M 36, 45, 80 P 2d 380.

16-1905. (4613.4A) Budget appropriations for outstanding warrants. When, at the end of any fiscal year, any county has outstanding registered emergency warrants against any fund issued by reason of any emergency budget or budgets, and is without sufficient cash in such fund to pay the same with interest thereon, the board of county commissioners must, in the annual budget for such fund for the immediately following fiscal year, make an appropriation sufficient to pay such warrants, with the interest thereon.

When, at the end of any fiscal year, any county has warrants outstanding and registered against any fund, other than warrants issued by reason of any emergency budget or budgets, and is without sufficient cash in such fund to pay the same with interest thereon, the board of county commissioners must, in the annual budget for such fund for the immediately following fiscal year, make an appropriation to pay such warrants, or a substantial part thereof, with the interest thereon. The amount of such appropriation shall be fixed and determined by the board of county commissioners, but must, in any event, be at least ten per centum (10%) of the amount which might be collected by a maximum levy for such fund, if the amount of such outstanding and registered warrants, with interest thereon, equals or exceeds such amount.

None of the provisions of this section shall be construed as authorizing a levy to be made for any fund in excess of the limitation now prescribed by existing law, or acts hereafter enacted amendatory thereof.

History: En. Sec. 1, Ch. 170, L. 1943.

16-1906. (4613.5) Appropriations—transfers among appropriations—use of borrowed money—liabilities for expenditures in excess of budget.

(1) The estimates of expenditures, itemized and classified as required in section 16-1902, and as finally fixed and adopted by said board of county commissioners, shall constitute the appropriations for the county for the fiscal year intended to be covered thereby, and the county commissioners, and every other county official, shall be limited in the making of expenditures or incurring of liabilities to the amount of such detailed appropriations and classifications, respectively; provided that upon a resolution adopted by the board of county commissioners at a regular or special meeting, and entered upon its minutes, transfers or revisions within the general class of salaries and wages and of maintenance and support may be made, provided, that no salary shall be increased above the amount appropriated therefor. Transfers between the general classes provided in section 16-1902 shall not be permitted, provided and except that in the case of appropriations to be expended from county road or bridge funds, special road district funds, or any special highway fund, any transfer between or among the general classes of (1) salaries and wages, (2) maintenance and support, and (3) capital outlay, may be made.

(2) Moneys received from borrowings shall be used for no other purpose than that for which borrowed, except that if any surplus remain after the accomplishment of the purpose for which borrowed it shall be used to redeem the county debt. Where any budget shall contain an expenditure program to be financed from a bond issue to be authorized thereafter, no expenditure shall be made or obligation incurred thereunder until such bonds have been duly authorized and the proceeds are available, and where any expenditure program is to be financed from a tax levy required to be authorized and approved at an election no expenditure shall be made or obligation incurred thereunder until such levy is so authorized and approved. Expenditures made, liabilities incurred, or warrants issued, in excess of any of the budget detailed appropriations as originally determined, or as thereafter revised by transfer, as herein provided, shall not be a liability of the county, but the official making or incurring of such expenditure or issuing such warrant shall be liable therefor personally and upon his official bond. The board of county commissioners shall not approve any claim, and the county clerk and recorder shall not issue any warrant for any expenditure in excess of said detailed budget appropriations as finally adopted, or as revised under the provisions hereof, except upon an order of a court of competent jurisdiction, or for an emergency as hereinafter provided. Any county commissioner or commissioners, or county clerk and recorder approving any claim or issuing any warrant in excess of any such budget appropriation, except as above provided, shall forfeit to the county fourfold the amount of such claim or warrant, which shall be recovered in an action against such county commissioner, or commissioners, or county clerk and recorder, or all of them, and their several sureties on their official bonds, and it shall be the duty of the county attorney of such county to bring an action therefor in the name of the county.

History: En. Sec. 5, Ch. 148, L. 1929.

Excess Funds—Reversion to General Fund

Where county commissioners fix salary

of officer at less than that provided in budget it is not necessary that there be a resolution for a transfer of a part of the funds, since excess funds will revert to the general fund at the end of the fiscal year. State ex rel. Thompson v. Gallatin County, 120 M 263, 184 P 2d 998, 1002.

Salary Schedule—Effect

When a salary schedule is adopted in the county budget the board of county commissioners is not bound to pay each

county employee the salary so fixed without diminution. State ex rel. Thompson v. Gallatin County, 120 M 263, 184 P 2d 998, 1002.

References

Great Northern Railway Co. v. Phillips County, 112 M 542, 545, 118 P 2d 754.

Collateral References

Counties⇒153, 159, 162.
20 C.J.S. Counties §§ 222, 232, 235.

16-1907. (4613.6) Emergency expenditures—notice and hearings—objections by taxpayers—appeal—notice and hearing dispensed with in extreme cases—emergency warrants—tax levy—lapse of appropriations.

(1) In a public emergency, other than such as are hereinafter specifically described, and which could not reasonably have been foreseen at the time of making the budget, the board of county commissioners, by unanimous vote of the members present at any meeting, the time and place of which all the commissioners shall have had reasonable notice, shall adopt and enter upon their minutes a resolution stating the facts constituting the emergency and the estimated amount of money required to meet such emergency and shall publish the same, together with a notice that a public hearing will be held thereon at the time and place designated therein, but which shall not be less than one week after the date of said publication, at which any taxpayer may appear and be heard for or against the expenditure of money for such alleged emergency. Such resolution and notice shall be published once in the official newspaper of the county, and if there be none then in a newspaper of general circulation in the county.

(2) Upon the conclusion of such hearing, if the commissioners shall approve of such emergency expenditure, they shall make and enter upon their official minutes, by unanimous vote of all of the members of the board present at such meeting, an order setting forth the facts constituting such emergency together with the amount of expenditure authorized by them therefor, which order, so entered, shall be lawful authorization for them to expend such amount, but no more, for such purpose, subject however, to the following limitations: No expenditures shall be made or liability incurred pursuant to said order until five (5) days, exclusive of the day of entry of said order, shall have elapsed, during which time any taxpayer or taxpayers of said county feeling aggrieved by said order may appeal therefrom to the district court for such county by filing with the clerk of such court a verified petition, a copy of which shall theretofore have been served upon the county clerk and recorder of said county as the clerk of the board of county commissioners. Said petition shall set forth in detail the objections of the petitioner or petitioners to said order, giving their reasons why the said emergency does not exist. The service and filing of such petition shall operate to suspend such emergency order and the authority to make any expenditure or incur any liability thereunder, until final determination of the matter by the court.

(3) Upon the filing of such petition the court shall immediately fix a time for hearing such petition which shall be at the earliest convenient time. At such hearing the court shall hear the matter de novo and may take

such testimony as it deems necessary. Its proceedings shall be summary and informal and its determination as to whether an emergency, such as is contemplated within the meaning and provisions of this act, exists or not, and whether the expenditure authorized by said order is excessive or not shall be final.

(4) The total of all emergency budgets, and appropriations made therein, in any one year, to be paid from the county poor fund shall not exceed the amount which would be produced by a mill levy equal to the difference between the mills levied in that year and the maximum mill levy authorized by law to be made for such fund, computed against the taxable value of the property subject to such levy, as shown by the last completed assessment roll of the county.

(5) Upon the happening of an emergency caused by fire, flood, explosion, storm, earthquake, epidemic, riot, or insurrection, or for the immediate preservation of order or of public health, or for the restoration of a condition of usefulness of which has been destroyed by accident, or for the relief of a stricken community overtaken by calamity, or in settlement of approved claims for personal injuries or property damages, exclusive of claims arising from the operation of any public utility owned by the county, or to meet mandatory expenditures required by law, the county commissioners may, upon adoption by unanimous vote of all members present at any meeting, the time and place of which all members shall have had reasonable notice, of a resolution stating the facts constituting the emergency, and entering the same upon their minutes, make the expenditures or incur the liabilities necessary to meet such emergency without further notice or hearing; provided, that the aggregate total of all expenditures made or liabilities incurred in any fiscal year to meet emergencies other than such as are caused by fire, flood, explosion, earthquake, epidemic, riot or insurrection, shall not exceed the sum of twenty-five thousand dollars (\$25,000.00) in counties of classifications 1, 2, 3 and 4; fifteen thousand dollars (\$15,000.00) in counties of classifications 5 and 6, and seven thousand five hundred dollars (\$7,500.00) in counties of classification 7 unless the excess above said sum shall first have been authorized by a majority of the taxpaying freeholders of such county, who are registered electors therein, voting at a general or special election. The question of authorizing such excess expenditure shall be submitted in the following form, inserting in the ballot the amount of the excess proposed to be authorized and a description of the emergency to be met:

Shall the board of county commissioners of _____ County, Montana be authorized to make additional expenditures and incur additional liabilities in the amount of \$_____ over and above the sum of _____, to meet an emergency caused by _____.

☐ Yes

☐ No

Notice of such election shall be given by posting notice thereof at least fifteen (15) days before such election in three (3) public places in each

voting precinct within the county and by publishing such notice for not less than ten (10) days before the date of such election.

(6) All emergency expenditures shall be made by the issuance of emergency warrants drawn against the fund or funds properly chargeable with such expenditures, and the county treasurer is authorized and directed to pay such emergency warrants with any money in such fund or funds available for such purpose, and if, at any time, there shall not be sufficient money available in such fund or funds to pay such warrants then such warrants shall be registered, bear interest and be called in for payment in the manner provided by law for other county warrants.

(7) The county clerk and recorder shall include in his annual tabulation to be submitted to the board of county commissioners the total amount of emergency warrants issued during the preceding fiscal year, and the county commissioners shall include in their tax levies a levy for each fund sufficient to raise an amount equal to the total amount of such warrants, if there be any, remaining unpaid at the close of such preceding fiscal year because of insufficient money in such fund to pay the same; provided, however, that no levy shall be made for any fund in excess of the levy authorized by law to be made therefor; and provided further, that the board of county commissioners may submit the question of funding such emergency warrants at any election, as provided by law, and if at any such election the issuing of such funding bonds be authorized it shall not then be necessary for any levy to be made for the purpose of paying such emergency warrants.

(8) All appropriations, other than appropriations for incompleated improvements in progress of construction, shall lapse at the end of the fiscal year; provided that the appropriation accounts shall remain open for a period of thirty (30) days thereafter for the payment of claims incurred against such appropriations prior to the close of the fiscal year and remaining unpaid. After such period shall have expired, all appropriations except as hereinbefore provided, regarding incompleated improvements, shall become null and void, and any lawful claim presented thereafter against any such appropriation shall be provided for in the next ensuing budget.

History: En. Sec. 6, Ch. 148, L. 1929; amd. Sec. 2, Ch. 170, L. 1943; amd. Sec. 1, Ch. 159, L. 1953; amd. Sec. 1, Ch. 148, L. 1955.

Construction

The general words "mandatory expenditures required by law" as used in subdivision 5 are not limited by the doctrine of ejusdem generis to the specific types of calamities enumerated earlier in the subdivision since the general words are not associated in any way with the specific words but rather they embrace an entirely different subject-matter from those characterized by the specific words. *Burke v. Sullivan*, 127 M 374, 265 P 2d 203.

Emergency Warrants Proper for Unbudgeted Drain Assessments

Where drain district assessments against a county, which had been approved by

the court and had the force of judgments, were unpaid for lack of funds, no budget appropriation having been made therefor, held; the clerk and chairman of the board of county commissioners should issue emergency warrants for the assessments and writ of mandate to the board itself, directing it to pay the assessments, was improperly issued. *State ex rel. Valley Center Drain District v. Board of County Commrs. of Big Horn County*, 100 M 581, 588, 51 P 2d 635.

Emergency Budget for General Relief Not for "Single Purpose" Requiring Electors' Approval Under Constitutional Inhibition

Held, that county commissioners establishing an emergency budget under this section for general relief purposes in the amount of \$15,000, without the approval of the electors, is not creating an indebted-

edness or liability for a "single purpose" in excess of \$10,000 without such approval within the inhibition of art. XIII, sec. 5 of the Constitution, since the entire debt for all relief purposes cannot be regarded a single purpose, because the emergency arises by virtue of many separate and distinct purposes, founded on a duty expressly imposed in normal functioning of a county. State ex rel. Nelson v. Board of County Commrs., 111 M 395, 397, 109 P 2d 1106.

References

State ex rel. Silver Bow County v. Brandjord, 107 M 231, 237, 82 P 2d 589; State ex rel. Barr v. District Court, 108 M 433, 435, 91 P 2d 399; Great Northern Railway Co. v. Phillips County, 112 M 542, 545, 118 P 2d 754.

Collateral References

Counties↪162, 164.
20 C.J.S. Counties §§ 235, 248.

16-1908. (4613.7) County clerk's report of expenditures and liabilities against budget appropriations, receipts from taxes and other sources—auditor to furnish statement of liabilities for which warrants not issued. On the first Monday in each month the county clerk and recorder shall submit to the board of county commissioners a report showing the expenditures and liabilities against each separate budget appropriation incurred during the preceding calendar month, and like information for the whole of the fiscal year to the first day of the month in which such report is made, together with the unexpended balance of each appropriation. He shall also set forth the receipts from taxes, and in detail the receipts from all other sources by each fund for the same period. In counties having county auditors the county auditor, on the last business day of each month, shall furnish the county clerk and recorder with a statement showing the total amount of liabilities incurred against each budget appropriation for which warrants have not been issued up to the close of said business day.

History: En. Sec. 7, Ch. 148, L. 1929.

16-1909. (4613.8) State examiner to make rules and regulations for carrying out act—accounting systems. The state examiner hereby is empowered, and it is made his duty to make such rules, regulations and classifications, and prescribe such forms as may be necessary to carry out the provisions of this act, to define what expenditures shall be chargeable to each budget account, and to establish such accounting and cost systems as may be necessary to provide accurate budget information.

History: En. Sec. 8, Ch. 148, L. 1929.

16-1910. (4613.9) Construction of act. This act shall not be construed to create any new fund or funds or to authorize a levy to be made for any fund in excess of the limitation now prescribed by existing law or acts amendatory thereof.

History: En. Sec. 9, Ch. 148, L. 1929.

Collateral References

Counties↪153½.
20 C.J.S. Counties § 236.

16-1911. (4613.10) Violation of act constitutes misdemeanor. Any person violating any of the provisions of this act shall be guilty of a misdemeanor.

History: En. Sec. 10, Ch. 148, L. 1929.

Collateral References

Counties↪102.
20 C.J.S. Counties § 146.

CHAPTER 20

COUNTY FINANCE—BONDS AND WARRANTS

- Section 16-2001. Investment of sinking funds of counties, cities and towns—protection and keeping of securities.
- 16-2002. County registered warrants—interest.
- 16-2003. Lost bond or warrant.
- 16-2004. Indemnity to be given.
- 16-2005. Duplicate bonds, warrants or coupons, how given.
- 16-2006. What notice imparted.
- 16-2007. Duty of county treasurer in reference to lost bonds.
- 16-2008. Board of county commissioners may issue bonds for certain purposes.
- 16-2009. Single purpose.
- 16-2010. Limitation on amount of bonds—issuance in excess of limitations void.
- 16-2011. Term of bonds—power to redeem—maximum interest.
- 16-2012. Form of bonds.
- 16-2013. Bonds issued for certain purposes may be issued without holding an election.
- 16-2014. Floating poor fund indebtedness—special levy to fund.
- 16-2015. Resolution, contents of.
- 16-2016. Excess in poor fund, how applied.
- 16-2017. Amount of special levy—disposition of proceeds.
- 16-2018. Grant in aid denied counties failing to avail themselves of act.
- 16-2019. Levy of special county tax to pay floating indebtedness—when authorized—disposal of proceeds.
- 16-2020. Procedure for taking advantage of act.
- 16-2021. Petition and election required for bonds issued for other purposes.
- 16-2022. Form, contents and proof of petition.
- 16-2023. Consideration of petition—calling election.
- 16-2024. Notice of election—election hours—election officers.
- 16-2025. Form of ballots and conduct of election.
- 16-2026. Who are entitled to vote.
- 16-2027. Percentage of electors required to authorize bond issue.
- 16-2028. Canvass of election returns—resolution for bond issue.
- 16-2029. Form of notice of sale of bonds.
- 16-2030. Publication of notice of sale.
- 16-2031. Notice to the state board of land commissioners.
- 16-2032. Sale of bonds.
- 16-2033. Form and execution of bonds.
- 16-2034. Printing of the bonds.
- 16-2035. Registration of bonds—copy to be preserved.
- 16-2036. Delivery of bonds—payment for same.
- 16-2037. Counties liable on bonds.
- 16-2038. Treasurer's certificate as to principal and interest to be paid.
- 16-2039. Tax.
- 16-2040. Liability of members of board of county commissioners.
- 16-2041. County bond funds.
- 16-2042. Payment of principal and interest.
- 16-2043. Redemption of bonds before maturity.
- 16-2044. Investment of sinking and interest fund.
- 16-2045. Cancellation of bonds, coupons and warrants.
- 16-2046. Exchange of bonds for amortization bonds.
- 16-2047. Application to outstanding bonds.
- 16-2048. County commissioners to transfer funds.
- 16-2049. Petty cash fund.
- 16-2050. Investment of county moneys in county warrants.

16-2001. (4622.1) Investment of sinking funds of counties, cities and towns—protection and keeping of securities. That the board of county commissioners of any county of the state of Montana, and the council or commission of any city or town of the state of Montana, shall have the power and authority and shall invest so much of the bond sinking funds of any such county, city or town, as is not needed for the payment of bonds or interest coupons, in United States Government bonds or securities,

state bonds or securities, county, city or school district bonds or county or city warrants or other bonds or securities which are supported by general taxation, except irrigation district bonds, and special improvement district or maintenance district bonds or warrants, provided, however, that all such investments must first be approved by the state examiner, and that all such bonds or securities must be due and payable at least sixty (60) days before the obligations, for the payment of which the sinking fund was established, shall become due and payable; and provided further, that whenever any of the bonds, for which such sinking fund was established, are not yet due but are then redeemable under optional provisions thereof, such sinking funds shall not be subject to investment but shall be used and applied in payment and redemption of such bonds. The bonds and securities in which any such sinking funds are invested shall be kept in the custody of the county, city or town treasurer and held by him for the benefit of the county, city or town, as the case may be. It shall be the duty of such treasurer to properly protect such bonds and securities by insurance, the use of safety deposit boxes, or other means, the expense of which shall be a proper charge against the particular county, city or town. All moneys derived from interest on sinking fund investments as herein authorized, shall be credited by the treasurer of such county, city or town, to the sinking fund for which the investment was made.

History: En. Sec. 1, Ch. 86, L. 1923; amd. Sec. 1, Ch. 37, L. 1939.

Cross-Reference

Fiscal year, sec. 59-701.

Collateral References

Counties \Rightarrow 186½.
20 C.J.S. Counties § 277.
14 Am. Jur. 222, Counties, §§ 61 et seq.;
43 Am. Jur. 261, Public Securities and Obligations, generally.

Sale of public bonds at less than par or face value. 91 ALR 7.

Printing, lithographing, or other mechanical signature on public bonds, coupons, or other public pecuniary obligations. 94 ALR 768.

Meaning of term "assessment" or "assessed valuation" when used as basis of tax or debt limit. 156 ALR 594.

16-2002. (4625) County registered warrants—interest. All county warrants hereafter issued, after having been presented to the county treasurer for payment and by him endorsed "Not paid for want of funds in the treasury," from and after the date of such presentation and endorsement, shall draw interest at the rate of four (4%) per cent per annum.

History: En. Sec. 1, p. 99, L. 1899; re-en. Sec. 2915, Rev. C. 1907; re-en. Sec. 4625, R. C. M. 1921; amd. Sec. 1, Ch. 15, L. 1941.

ment at a certain time and payment refused for want of funds in the treasury. Territory ex rel. Largey v. Gilbert, 1 M 371, 375, 378.

Operation and Effect

Under the act of February 8, 1865, authorizing county commissioners to pay interest on county warrants, it was held that the neglect of the county treasurer to indorse a county warrant, "not paid for want of funds in the treasury," does not release the county from its liability to pay the interest authorized by statute, and that the indorsement should show that the warrant had been presented for pay-

References

State ex rel. Case v. Bolles et al., 74 M 54, 65, 238 P 586; Great Northern Railway Co. v. Phillips County, 112 M 542, 545, 118 P 2d 754.

Collateral References

Counties \Rightarrow 168(4).
20 C.J.S. Counties § 255.
14 Am. Jur. 233, Counties, §§ 73 et seq.

16-2003. (4626) Lost bond or warrant. The bond is authorized, upon satisfactory proof that any original bond, warrant, or coupon has been lost

or destroyed, to issue to the owner or holder of such bond, warrant, or coupon a duplicate thereof, which will take the place in order of registration and payment of such original bond, warrant, or coupon, and in all cases supersede and take the place of such original.

History: En. Sec. 1, p. 83, L. 1881; re-en. Sec. 4251, Pol. C. 1895; re-en. Sec. 2916, Rev. C. 1907; re-en. Sec. 4626, R. C. M. 1921.

Collateral References

Counties⇒165.
20 C.J.S. Counties § 249.

16-2004. (4627) Indemnity to be given. Before issuing such duplicate bond, warrant, or coupon, the board must require the person demanding the same to execute and deliver to the treasurer of the county a bond, payable to the county, in double the amount of the bond, warrant, or coupon, with at least two good and sufficient sureties, who must be required to justify as in case of attachment, the conditions of such bond being that the principal and sureties therein will indemnify and save harmless the county from all loss, costs, or damages by reason of the issuing of the duplicate, and will pay to any person entitled to receive the same, as the lawful holder of the original bond, warrant, or coupon, all moneys received upon such duplicate.

History: En. Sec. 2, p. 83, L. 1881; re-en. Sec. 4252, Pol. C. 1895; re-en. Sec. 2917, Rev. C. 1907; re-en. Sec. 4627, R. C. M. 1921.

16-2005. (4628) Duplicate bonds, warrants or coupons, how given. The chairman of the board, at the time of issuing any duplicate bond, warrant, or coupon, must write across or upon the face thereof the word "duplicate," in red ink.

History: En. Sec. 3, p. 83, L. 1881; re-en. Sec. 4253, Pol. C. 1895; re-en. Sec. 2918, Rev. C. 1907; re-en. Sec. 4628, R. C. M. 1921.

16-2006. (4629) What notice imparted. The word "duplicate" upon any bond, warrant, or coupon imparts notice to all persons that the same is issued subject to the provisions of this article.

History: En. Sec. 4, p. 83, L. 1881; re-en. Sec. 4254, Pol. C. 1895; re-en. Sec. 2919, Rev. C. 1907; re-en. Sec. 4629, R. C. M. 1921.

Collateral References

Counties⇒166.
20 C.J.S. Counties § 248.

16-2007. (4630) Duty of county treasurer in reference to lost bonds. It is the duty of the county treasurer, upon the production to him of any original bond, warrant, or coupon, by the lawful owner or holder thereof, to assign by indorsement and to deliver to him the bond mentioned in section 16-2004, and such owner or holder may maintain an action in his own name upon such bond for the recovery of any moneys paid upon such duplicate, but the delivery of such bond does not relieve or exonerate the county from the payment of the amount specified therein upon a demand and refusal of the sureties named in the indemnifying bond to pay the same.

History: En. Sec. 5, p. 83, L. 1881; re-en. Sec. 4255, Pol. C. 1895; re-en. Sec. 2920, Rev. C. 1907; re-en. Sec. 4630, R. C. M. 1921.

Collateral References

Counties⇒187.
20 C.J.S. Counties § 276.

16-2008. (4630.1) Board of county commissioners may issue bonds for certain purposes. The board of county commissioners of every county of the state is hereby vested with the power and authority to issue, negotiate

and sell coupon bonds on the credit of the county, as hereinafter in this act more specifically provided, for any of the following purposes:

(a). For the purpose of acquiring land for sites and grounds for a public building or buildings of any kind within the county and under its control, which the county has lawful authority to acquire or erect, control and maintain; for the purpose of acquiring land for any other public use or activity within the county, under its control and authorized by law.

(b). For the purpose of constructing, erecting or acquiring by purchase necessary public buildings within the county, under its control and authorized by law, making additions to and repairing buildings and for the purpose of furnishing and equipping the same.

(c). For the purpose of acquiring rights of way for and constructing public highways and bridges, or either of them.

(d). For the purpose of enabling a county to liquidate its indebtedness to another county incident to the creation of a new county or the changing of any county boundary line.

(e). For the purpose of funding, paying and retiring outstanding county warrants lawfully issued against the county general fund, road fund, bridge fund or poor fund, when there is not sufficient money in the fund against which such warrants are drawn to pay and retire such warrants and the levying of taxes sufficient to pay and retire such warrants within a period of three (3) years would, in the judgment of the board of county commissioners, work a hardship and be an undue burden upon the taxpayers of the county.

(f). For the purpose of refunding, paying and redeeming optional, redeemable or maturing bonds when there are not sufficient funds available to pay such bonds and it is deemed for the best interests of the county to refund such bonds.

(g). For the purpose of funding, paying and retiring outstanding seed grain warrants lawfully issued under the provisions of section 4651, and for the purpose of funding, paying and retiring outstanding special relief warrants lawfully issued under the provisions of section 4692, when there is not sufficient money available to pay such warrants and the levying of special taxes sufficient to pay the same within a period of three (3) years would, in the judgment of the board of county commissioners, work a hardship and be an undue burden upon the taxpayers of the county.

(h). For the purpose of funding, paying in full or compromising, settling and satisfying any judgment which may have been rendered against the county in a court of competent jurisdiction, when there are not sufficient funds available to pay such judgment and when sufficient money cannot be raised to satisfy such judgment by an annual tax levy of ten (10) mills levied on all the taxable property within the county through a period of three (3) years.

The resolution providing for the issue of such bonds must recite the facts concerning the judgment to be funded and the terms of any compromise agreement which may have been entered into between the board of county commissioners and the judgment creditor.

(i). Whenever the total indebtedness of a county exceeds the constitutional limitation of five per centum (5%) of the value of the taxable prop-

erty therein and the board of county commissioners of said county finds and determines that the county is unable to pay and discharge such indebtedness in full, the said board of county commissioners shall have the power and authority to negotiate with the holders of the bonds of said county for an agreement or agreements whereby said bondholders agree to accept less than the full amount of such bonds and the accrued unpaid interest thereon in full payment and satisfaction thereof, to enter into such agreement or agreements and to issue refunding bonds for the amount agreed upon. These bonds may be issued in more than one series if the circumstances so require and each series may be either amortization bonds or serial bonds.

The plan agreed upon between the board of county commissioners and the bondholders shall be embodied in full in the resolution providing for the issue of such bonds.

History: En. Sec. 1, Ch. 188, L. 1931; amd. Sec. 1, Ch. 135, L. 1937.

NOTE.—Sections 4651 and 4692, referred to in subdivision (g), have been repealed.

Cross-References

County free library bonds, sec. 44-206.
County high school bonds, secs. 75-4112, 75-4113, 75-4115.

Effect of Funding Road Warrants

Taxpayer paid city taxes for years 1937 and 1938 at which time this section was in effect. The county later proposed to sell funding bonds to redeem road fund warrants issued, in part, during those years, the bonds to be issued pursuant to

ch. 188, Laws of 1939. Since this section, authorizing issuance of funding bonds to retire road fund warrants was in effect when the taxes were paid, the subsequent statute did not offend against sec. 13, art. XV of the Constitution prohibiting any law imposing a new liability in respect to transactions or considerations already passed. State ex rel. Siegfriedt v. Carbon County, 108 M 510, 517, 92 P 2d 301.

Collateral References

Counties \hookrightarrow 174, 175.
20 C.J.S. Counties §§ 258, 261.
14 Am. Jur. 222, Counties, §§ 61 et seq.;
43 Am. Jur. 261, Public Securities and Obligations generally.

16-2009. (4630.2) Single purpose. Acquiring land for a site for a public building, or for any other public use within the county, and constructing, erecting or acquiring by purchase any building, courthouse, jail, hospital, civic center, youth center, park, museum, recreation center, and any combination thereof, on such land, and furnishing and equipping the same, shall be deemed a single purpose; acquiring a right-of-way for and constructing a public highway including any bridge or bridges thereon, shall be deemed a single purpose; the construction of two or more bridges, when not forming a part of the same public highway, shall be deemed separate purposes; a contribution by a county to the cost of a federal aid bridge shall be deemed a separate purpose, and a contribution by a county to the cost of a federal aid highway project on a highway leading to said bridge shall be deemed a separate purpose. Nothing herein contained shall be construed as amending or repealing sections 16-1163 to 16-1165.

History: En. Sec. 2, Ch. 188, L. 1931; amd. Secs. 1, 2, Ch. 240, L. 1947.

Collateral References

Counties \hookrightarrow 174.
20 C.J.S. Counties § 261.

16-2010. (4630.3) Limitation on amount of bonds—issuance in excess of limitations void. No county shall issue bonds for any purpose which, with all outstanding bonds and warrants, except county high school bonds and emergency bonds, will exceed two and one-half per centum (2½%) of

the value of the taxable property therein, to be ascertained by the last assessment for state and county taxes previous to the issuance of such bonds; provided, however, that a county may issue bonds which, with all outstanding bonds and warrants will exceed two and one-half per centum ($2\frac{1}{2}\%$), but will not exceed five per centum (5%) of the value of such taxable property, when necessary to do so for the purpose of replacing, rebuilding, or repairing county buildings, bridges or highways which have been destroyed or damaged by an act of God, disaster, catastrophe, or accident, or when necessary to do so for the purpose of acquiring land for a site for county high school buildings and for erecting or acquiring buildings thereon and furnishing and equipping the same for county high school purposes; provided, however, that this act shall not be construed to extend limitations on bonded indebtedness for county high school purposes, as fixed by section 75-4114, and acts amendatory thereof; and further provided, that the foregoing limitations shall not apply to refunding bonds issued for the purpose of paying or retiring county bonds lawfully issued prior to January 1, 1932. All bonds issued by any county in excess of the limitations herein fixed shall be null and void. The words "value of the taxable property," as used in this section, are used in the same sense as in section 5 of article 13, of the constitution, and shall be given the same meaning and construction.

History: En. Sec. 3, Ch. 188, L. 1931; amd. Sec. 1, Ch. 115, L. 1933; amd. Sec. 2, Ch. 135, L. 1937.

NOTE.—Section 75-4114, referred to above, was repealed by Sec. 1, Ch. 83, Laws 1951.

Collateral References

Counties—173(2).

20 C.J.S. Counties § 259.

38 Am. Jur. 110, Municipal Corporations, §§ 422 et seq.; 43 Am. Jur. 287, Public Securities and Obligations, §§ 21 et seq.

Obligation for local improvements as within municipal debt limit. 33 ALR 1415.

Funding or refunding obligations as subject to conditions respecting limitation of indebtedness or approval by voter. 97 ALR 442.

16-2011. (4630.4) Term of bonds—power to redeem—maximum interest. No bonds issued for any of the purposes designated in subdivisions (a), (b), or (c), of section 16-2008, shall be for a longer term than twenty (20) years; no bonds issued for any of the purposes designated in subdivisions (d), or (e), of section 16-2008, shall be for a longer term than ten (10) years.

The following limitations as to term shall apply to all bonds issued under subdivision (f) of section 16-2008; No bonds shall be issued for a longer term than ten (10) years, provided, that if the unexpired term of the bonds to be refunded shall be more than ten (10) years then, in such event, the refunding bonds may be issued for such unexpired term; or if such ten (10) year term will require an annual tax levy for payment of such refunding bonds exceeding ten (10) mills on all property subject to taxation in the county, then, in such event, the term may be so extended as to reduce the required annual levy to ten (10) mills, provided, however, that the term shall not under any circumstances exceed twenty (20) years.

No bonds issued for any of the purposes designated in subdivision (g) of section 16-2008 shall be for a longer term than five (5) years.

Bonds issued for any of the purposes designated in subdivisions (h) and (i) of section 16-2008 shall not be for a longer term than will be required to repay the bonds with interest through a tax levy of ten (10) mills on all

the property within the county subject to taxation and the term shall not exceed (20) years. The length of the term required shall be estimated and calculated by the board of county commissioners based upon the percentage of valuation of the property upon which taxes are levied and paid within such county as ascertained from the last completed assessment for state and county taxes taking into account probable changes in the taxable valuation and losses in tax collections, provided, however, that irrespective of any miscalculation by the county commissioners in fixing the term of the bonds the county must from year to year make a sufficient tax levy to pay the interest and installments on principal on the bonds as the same fall due.

All bonds issued for a longer term than five (5) years shall be redeemable at the option of the county five (5) years from the date of issue and on any payment due date thereafter before maturity and shall be so stated on the face of the bonds. The maximum rate of interest which any of such bonds may bear shall be six per cent (6%) per annum and shall be payable semiannually.

History: En. Sec. 4, Ch. 188, L. 1931; amd. Sec. 2, Ch. 115, L. 1933; amd. Sec. 3, Ch. 135, L. 1937; amd. Sec. 1, Ch. 33, L. 1943.

Collateral References

43 Am. Jur. 362, Public Securities and Obligations, §§ 112-116.

16-2012. (4630.5) Form of bonds. All bonds hereafter issued by any county shall be either amortization bonds or serial bonds, and all things being equal amortization bonds shall be issued in preference to serial bonds, otherwise serial bonds may be issued.

The term "amortization bonds," as used in this act, is hereby defined as meaning that form of bond on which a part of the principal is required to be paid each time interest becomes due and payable, which part payment of principal increases with each following installment in the same amount the interest payment decreases, so that the combined amount payable on principal and interest is the same on each interest payment date; provided, however, that the final payment may vary in amount from the other payments to the extent resulting from disregarding fractional cents in the other payments.

The term "serial bonds," as used in this act, is hereby defined as being a bond issue payable in equal annual installments, one (1) installment consisting of one (1) or more bonds, becoming due and payable each year, the amount to be paid and redeemed each year being determined by dividing the total amount of the bonds to be issued by the total number of years the issue is to run, so that the total amount of principal to be paid each year the bonds are to run will be the same; provided, however, that the final payment may vary in amount from the other payments to the extent resulting from fixing the amount of each bond of the other payments at one hundred dollars (\$100.00) or some multiple thereof.

History: En. Sec. 5, Ch. 188, L. 1931.

20 C.J.S. Counties § 268.

Collateral References
Counties 183(2).

43 Am. Jur. 356, Public Securities and Obligations, §§ 106-111.

16-2013. (4630.6) Bonds issued for certain purposes may be issued without holding an election. Bonds issued for the purpose of enabling a county to liquidate its indebtedness to another county incident to the crea-

tion of a new county or the changing of a county boundary line; for the purpose of refunding, paying and redeeming optional, redeemable or maturing bonds; for the purpose of funding, paying in full, or compromising, settling and satisfying any judgment which may have been rendered against the county in a court of competent jurisdiction; and for the purpose of refunding any bonds for which the holders have agreed to accept less than the full amount of principal and interest in full payment and satisfaction; as set forth in subdivisions (d), (e), (f), (g), (h), and (i), of section 16-2008, may be issued without submitting the same to an election. Provided, however, that no refunding bonds shall be issued, unless such refunding bonds shall bear interest at a rate of at least one-half of one per cent ($\frac{1}{2}$ of 1%) less than the outstanding bonds which are to be refunded. In order to issue bonds for any of said purposes it shall only be necessary for the board of county commissioners, at a regular or duly called special meeting, to pass and adopt a resolution setting forth the facts in regard to the indebtedness to be paid or bonds to be refunded, showing the reason for issuing such bonds and fixing and determining the details thereof, giving notice of the sale thereof in the same manner that notice is required to be given of the sale of bonds authorized at an election, and then following the procedure prescribed in this act for the sale and issuance of such bonds.

All bonds sold without submitting the question of their issue to an election, as herein authorized, shall be sold at open competitive bidding, but all sealed and written bids submitted for the purchase of such bonds shall be considered the same as open bids.

History: En. Sec. 6, Ch. 188, L. 1931; amd. Sec. 4, Ch. 135, L. 1937; amd. Sec. 2, Ch. 33, L. 1943.

Collateral References

Counties \Rightarrow 178.

20 C.J.S. Counties § 266.

16-2014. Floating poor fund indebtedness—special levy to fund. The board of county commissioners of any county having, at the close of business on the 30th day of June, 1943, a floating indebtedness consisting of valid outstanding warrants drawn and issued against its poor fund, or valid and subsisting debts and liabilities, including any amount or amounts owing to the state public welfare department, or to any of its funds, by way of reimbursement, payable out of such poor fund but for which warrants have not been issued, or consisting of both such warrants and debts and liabilities, and being without sufficient money in such poor fund with which to pay the same and leave a balance therein sufficient to meet the expenditures which will be required to be made therefrom during the period July 1, 1943 to October 31, 1943, may provide for the payment of such floating indebtedness, or so much thereof as cannot be paid from the money in such poor fund and leave such required balance, by making special levies for and during either or both of the fiscal years July 1, 1943 to June 30, 1944, and July 1, 1944 to June 30, 1945, as hereinafter provided.

History: En. Sec. 1, Ch. 92, L. 1943.

16-2015. Resolution, contents of. The board of county commissioners of any county desiring to take advantage of the provisions of this act shall, at the regular meeting of the board in July, 1943, adopt a resolution, which shall set forth the following as of the close of business on June 30, 1943: (a) the amount of such outstanding poor fund warrants; (b) the amount

of all debts and liabilities for which warrants have not been issued, excluding any amount or amounts due to the state public welfare board or any of its funds; (c) the amount or amounts due to the state public welfare board or any of its funds; (d) the amount of money in the poor fund; (e) an estimate of the amount necessary to meet expenditures which will be required to be made from the poor fund during the period July 1 to October 31, 1943; (f) the excess, if any, of the amount of money in the poor fund over the amount of such estimated required expenditures, and which excess can be applied in payment of such floating indebtedness; (g) the amount of such floating indebtedness which cannot be paid out of moneys in the poor fund and leave a balance therein sufficient to meet such estimated required expenditures and to the payment of which amount the proceeds of the special tax herein authorized to be made shall be applied.

History: En. Sec. 2, Ch. 92, L. 1943.

16-2016. Excess in poor fund, how applied. If it shall appear from said resolution that there is any amount of money in the poor fund in excess of the amount required for such estimated expenditures, then such excess shall be applied in payment of such floating indebtedness, provided, that if the resolution shall show that the county is owing any amount or amounts to the state public welfare department for reimbursements, then any such excess, or so much thereof as may be necessary, shall be applied in payment of such amount or amounts owing to such state public welfare department.

History: En. Sec. 3, Ch. 92, L. 1943.

16-2017. Amount of special levy—disposition of proceeds. The board of county commissioners of any such county, after the adoption of such resolution shall have the power and authority to make a special tax levy of not exceeding one (1) mill for the fiscal year July 1, 1943 to June 30, 1944, for the purpose of paying such floating indebtedness, with interest thereon, and if the proceeds of such levy are not sufficient for such purpose, then to make a levy of not exceeding one (1) mill for the fiscal year July 1, 1944 to June 30, 1945, for such purpose, such levies to be made at the time other tax levies are made and fixed by the board. The proceeds of such special tax levy or levies shall be by the county treasurer deposited in a special fund to be designated "poor fund debt reduction fund" and shall not be used for any purpose whatever except for payment of the principal and interest of such floating indebtedness as set out in said resolution, provided, that if said resolution shall show any amount or amounts owing to the state public welfare department or to any of its funds, the proceeds of such levy or levies shall first be applied to the payment thereof, and any remaining amount of such proceeds shall then be applied to the payment of such other floating indebtedness; and provided, further, that if, after all of such floating indebtedness, with interest thereon, has been fully paid, any amount remains in such special fund then such amount, with any amounts coming into said fund thereafter from payment of delinquent or protested taxes, shall be transferred to the poor fund of the county.

History: En. Sec. 4, Ch. 92, L. 1943.

16-2018. Grant in aid denied counties failing to avail themselves of act. No county which may take advantage of the provisions of this act, and

which fails to do so, and which shall be owing any amount or amounts to the state public welfare department or any of its funds by way of reimbursement, and which amount or amounts, or some part thereof, could have been paid by such county taking advantage of this act and making a levy or levies as herein provided, shall receive from the state public welfare department any grant in aid in accordance with or under the provisions of sections 71-301 to 71-314 so long as any part of any such amount or amounts, shall remain unpaid.

History: En. Sec. 5, Ch. 92, L. 1943.

16-2019. Levy of special county tax to pay floating indebtedness—when authorized—disposal of proceeds. The board of county commissioners of each county having, at the close of business on the 15th day of February, 1943, a floating indebtedness in excess of two-fifths ($2/5$) of one (1) per cent of the taxable valuation of the county for the fiscal year July 1, 1942, to June 30, 1943, consisting of valid and subsisting outstanding warrants drawn against any fund or funds, and being without sufficient money in any such fund or funds with which to pay the same, and leave a balance or balances sufficient to meet the expenditures from such fund or funds necessary to be made therefrom during the fiscal year ending June 30, 1943, may provide for the payment of such floating indebtedness, or so much thereof as is in excess of the money in such fund or funds available for the payment thereof, by levying a special tax or taxes sufficient to pay such floating indebtedness with the interest thereon; provided, however, that the board of county commissioners may levy a special tax or taxes during the fiscal year commencing July 1, 1943, in an amount sufficient to pay the whole of such floating indebtedness, with the interest thereon, during such fiscal year, or such board of county commissioners may levy in each year, beginning with the fiscal year commencing July 1, 1943, a special tax or taxes in an amount sufficient to pay at least twenty (20) per centum of such floating indebtedness with interest thereon in each fiscal year, but such special taxes must be levied in such amounts as will be sufficient to fully pay the whole of such floating indebtedness with the interest thereon before the 1st day of July, 1947.

The proceeds of every such special tax levy shall be by the county treasurer deposited in a special fund to be designated "debt reduction fund," and shall not be used for any purpose whatever except for payment of the principal and interest of such floating indebtedness incurred prior to and outstanding on February 15, 1943; provided, that after the principal and interest of such floating indebtedness have been fully paid, any amount remaining in such special fund, or afterwards coming into the same from protested or delinquent taxes, may be transferred to the general fund of the county, or to such other county fund as the board of county commissioners may order.

History: En. Sec. 1, Ch. 98, L. 1943.

16-2020. Procedure for taking advantage of act. The board of county commissioners having any such floating indebtedness, and desiring to take advantage of the provisions of this act, must, not later than the 15th day of March, 1943, adopt a resolution stating that it is the intention of the

board of county commissioners of such county to provide for the payment of registered warrants outstanding at the close of business on February 15th, 1943, and the amount of such warrants issued and outstanding against each fund and which are to be paid. Said board shall, in its budget for the fiscal year commencing July 1, 1943, and in its annual budget each year thereafter, make an appropriation sufficient to pay the amount of such warrants as provided by such resolution, with the interest which will be due on such amount, and at the time of fixing tax levies for county purposes said board shall annually fix a special levy of such number of mills as may be necessary to raise such amount with such interest, until such warrants with the interest thereon are fully paid.

History: En. Sec. 2, Ch. 98, L. 1943.

16-2021. (4630.7) Petition and election required for bonds issued for other purposes. County bonds for any other purpose than those enumerated in section 16-2013 shall not be issued unless authorized at a duly called special or general election at which the question of issuing such bonds was submitted to the qualified electors of the county and approved, as provided in section 16-2027; and no such bond election shall be called unless there has been presented to the board of county commissioners a petition, asking that such election be held and such question be submitted, signed by not less than twenty per centum (20%) of the qualified electors of the county, who are taxpayers upon property within the county and whose names appear on the last completed assessment roll for state and county taxes.

History: En. Sec. 7, Ch. 188, L. 1931.

16-2022. (4630.8) Form, contents and proof of petition. Every petition for the calling of an election to vote upon the question of issuing county bonds shall plainly and clearly state the purpose or purposes for which the proposed bonds are to be issued, and shall contain an estimate of the amount necessary to be issued for such purpose or purposes. There may be a separate petition for each purpose, or two (2) or more purposes may be combined in one (1) petition if each purpose, with an estimate of the amount of bonds necessary to be issued therefor, is separately stated in such petition. Such petition may consist of one (1) sheet, or of several sheets identical in form and fastened together after being circulated and signed so as to form a single complete petition before being delivered to the county clerk as hereinafter provided. The petition shall give the postoffice address and voting precinct of each person signing the same.

Only persons who are qualified to sign such petitions shall be qualified to circulate the same, and there shall be attached to the completed petition the affidavit of some person who circulated, or assisted in circulating such petition, that he believes the signatures thereon are genuine and that the signers knew the contents thereof before signing the same. The completed petition shall be filed with the county clerk who shall, within fifteen (15) days thereafter, carefully examine the same and the county records showing the qualifications of the petitioners, and attach thereto a certificate under his official signature and the seal of his office, which certificate shall set forth:

(1) The total number of persons who are registered electors and whose names appear upon the last completed assessment roll for state and county taxes.

(2) Which and how many of the persons whose names are subscribed to such petition are possessed of all of the qualifications required of signers to such petition.

(3) Whether such qualified signers constitute more or less than twenty per centum (20%) of the registered electors whose names appear upon the last completed assessment roll for state and county taxes.

History: En. Sec. 8, Ch. 188, L. 1931.

16-2023. (4630.9) Consideration of petition—calling election. When such petition has been filed with the county clerk and he has found that it has a sufficient number of signers, qualified to sign the same, he shall place the same before the board of county commissioners at its first meeting held after he has attached his certificate thereto. The board shall thereupon carefully examine the petition and make such other investigation as it may deem necessary.

If it is found that the petition is in proper form, bears the requisite number of signers of qualified petitioners, and is in all other respects sufficient, the board shall pass and adopt a resolution which shall recite the essential facts in regard to the petition and its filing and presentation, the purpose, or purposes, for which the bonds are proposed to be issued, and fix the exact amount of bonds proposed to be issued for each purpose, which amount may be less than but must not exceed the amount set forth in the petition, determine the number of years through which such bonds are to be paid, not exceeding the limitations fixed in section 16-2011, and making provision for having such question submitted to the qualified electors of the county at the next general election, or at a special election which the board may call for such purpose.

History: En. Sec. 9, Ch. 188, L. 1931.

16-2024. (4630.10) Notice of election—election hours—election officers. Whether such election is held at the general election, or at a special election, separate notice shall be given thereof. Such notice shall state the date when such election will be held, the hours between which the polls will be open, the amount of bonds proposed to be issued, the purpose of the issue, the term of years through which the bonds are to be paid, and such other information regarding the holding of the election and the bonds proposed to be issued as the board may deem proper. If bonds are to be issued for two (2) or more purposes, each purpose and the amount therefor must be separately stated. Such notice shall be posted in each voting precinct throughout the county in the same manner as notices for a general election are required to be posted. Such notice must also be published once each week for four (4) consecutive weeks preceding the election in the official newspaper of the county.

If the question of issuing bonds is submitted at a special election called for such purpose the board of county commissioners shall fix the hours through which the polls are to be kept open, which shall be not less than eight (8), and which must be stated in the notice of election, and may

appoint a smaller number of election judges than is required for a general election, but in no case shall there be less than three (3) judges in the precinct, and such judges shall act as their own clerks.

If the question of issuing bonds is submitted at a general election, the polls shall be kept open during the same hours as are fixed for such general election and the judges and clerks for such general election shall act as the judges and clerks for such bond election.

History: En. Sec. 10, Ch. 188, L. 1931.

NOTE.—See sec. 23-1203 for hours of election.

16-2025. (4630.11) Form of ballots and conduct of election. The form of ballots shall be as prescribed by section 16-2306; but if bonds are sought to be issued for two (2) or more separate purposes, then separate ballots must be provided for each purpose. The election shall be conducted in the manner prescribed by said section 16-2306, and the general election laws of the state shall govern insofar as they are applicable; but if such question be submitted at a general election the votes thereon must be counted separately and separate returns must be made by the judges and clerks at such election.

History: En. Sec. 11, Ch. 188, L. 1931.

Collateral References

43 Am. Jur. 342, Public Securities and Obligations, §§ 88-99.

16-2026. (4630.12) Who are entitled to vote. In all county bond elections hereafter held only qualified registered electors residing within the county, who are taxpayers upon property therein and whose names appear upon the last completed assessment roll for state, county and school district taxes, shall have the right to vote. Upon the adoption of the resolution calling for the election, the county clerk must cause to be published in the official newspaper of the county a notice, signed by him, stating that registration for such bond election will close at noon on the fifteenth day prior to the date for holding such election and at that time the registration books shall be closed for such election. Such notice must be published at least ten (10) days prior to the day when such registration books will be closed.

After the closing of the registration books for such election the county clerk shall promptly prepare lists of the registered electors of such voting precinct, who are taxpayers upon property within the county and whose names appear on the last completed assessment roll for state, county and school district taxes, and who are entitled to vote at such election, and shall prepare poll books for such election, as provided in section 23-515, and deliver the same to the judges of election prior to the opening of the polls. It shall not be necessary to publish or post such list of qualified electors.

History: En. Sec. 12, Ch. 188, L. 1931;
amd. Sec. 1, Ch. 138, L. 1939.

16-2027. (4630.13) Percentage of electors required to authorize bond issue. Whenever the question of issuing county bonds for any purpose is submitted to the qualified electors of a county, at either a general or special election, not less than forty per centum (40%) of the qualified electors entitled to vote on such question must vote thereon, otherwise such proposition shall be deemed to have been rejected; provided, however, that if forty per centum (40%), or more of such qualified electors do vote on such

question, at such election, and a majority of such votes shall be cast in favor of such proposition, then such proposition shall be deemed to have been approved and adopted.

History: En. Sec. 13, Ch. 188, L. 1931.

16-2028. (4630.14) Canvass of election returns—resolution for bond issue. If the bonding election be held at the same time as a general election, then the returns shall be canvassed at the same time as the returns from such general election; but if the bonding election is a special election, then the board of county commissioners shall meet within ten (10) days after the date of holding such special election and canvass the returns. If it is found that at such election forty per centum (40%) or more, of the qualified electors entitled to vote at such election voted on such question, and that a majority of such votes were cast in favor of the issuing of such bonds, the board of county commissioners shall, at a regular or special meeting held within thirty (30) days thereafter, pass and adopt a resolution providing for the issuance of such bonds. Such resolution shall recite the purpose for which such bonds are to be issued, the amount thereof, the maximum rate of interest the bonds may bear, the date they shall bear, the period of time through which they shall be payable, the optional provisions, if any; and provide for the manner of the execution of the same. It shall provide that preference shall be given amortization bonds but shall fix the denomination of serial bonds in case it shall be found advantageous to issue bonds in that form, and shall adopt a form of notice of the sale of the bonds.

The board may, in its discretion, provide that such bonds may be issued and sold in two or more series or installments.

History: En. Sec. 14, Ch. 188, L. 1931.

Operation and Effect

In view of the purpose of chapter 24, Laws Extraordinary Session 1933-34 (omitted) i. e., to permit counties to secure the benefits of the national industrial recovery act by borrowing money from the federal government for emergency relief, and the fact that it was apparent at the time the act was passed that the conditions and requirements of the government would conflict with the general laws of the state with relation to issuance and sale of bonds, held, that failure of a board of

county commissioners strictly to comply with the provisions of this section and section 16-2029, as to the form of resolution to be passed by it providing for the issuance of bonds voted to obtain a federal loan was not fatal to their validity; having followed those provisions as closely as it was possible for it to do, and at the same time conform to the requirements of the federal government, their action was sufficient; so far as not in harmony with the federal requirements, this section and the following section must be held inapplicable. *Shekelton v. Toole County et al.*, 97 M 213, 216 et seq., 33 P 2d 531.

16-2029. (4630.15) Form of notice of sale of bonds. The notice of sale shall state the purpose or purposes for which the bonds are to be issued and the amount proposed to be issued for each purpose and shall be substantially in the following form:

NOTICE OF SALE OF COUNTY BONDS

Notice is hereby given by the board of county commissioners of.....
..... county, state of Montana, that the said board will on the
day of, 19....., at the hour of o'clock
.....M., at the office of the board in the court house in the (town or city)
of in the said county, sell to the highest and

best bidder for cash, either amortization or serial bonds of the said county in the total amount ofdollars (\$.....), for the purpose of

Amortization bonds will be the first choice and serial bonds will be the second choice of the said board.

If amortization bonds are sold and issued, the entire issue may be put into one single bond or divided into several bonds, as the said board may determine upon at the time of sale, both principal and interest to be payable in semi-annual installments during a period of years from the date of issue.

If serial bonds are issued and sold they will be in the amount of dollars (\$.....) each, except the last bond which will be in the amount of dollars (\$.....); the sum of dollars (\$.....) of the said serial bonds will become payable on the day of, 19....., and a like amount on the same day each year thereafter until all of such bonds are paid, except that the last installment will be in the amount of dollars (\$.....).

The said bonds, whether amortization or serial bonds, will bear date of, 19....., and will bear interest at a rate not exceeding six per centum (6%) per annum, payable semi-annually, on the day of (month) and (month) in each year, and will be redeemable in full (here insert the optional provisions, if any, to be recited in the bonds.)

The said bonds will be sold for not less than their par value with accrued interest to date of delivery, and all bidders must state the lowest rate of interest at which they will purchase the bonds at par. The board reserves the right to reject any and all bids and to sell the said bonds at private sale.

All bids other than by or on behalf of the state board of land commissioners of the state of Montana must be accompanied by a certified check in the sum of dollars, \$.....), payable to the order of the clerk, which will be forfeited by the successful bidder in the event that he shall fail or refuse to complete the purchase of the said bonds in accordance with the terms of his bid.

All bids should be addressed to the board of county commissioners of said county and delivered to the county clerk of said county.

ATTEST:

.....
Chairman, Board of County Commissioners
of county,
State of Montana.

.....
Clerk of the Board of County Commissioners
of county, Montana.

Address Montana.

History: En. Sec. 15, Ch. 188, L. 1931.

Operation and Effect

In view of the purpose of chapter 24, Laws Extraordinary Session 1933-34 (omitted) i. e., to permit counties to secure the benefits of the national industrial recovery act by borrowing money from the federal government for emergency relief, and the fact that it was apparent at the time the act was passed that the conditions and requirements of the government would conflict with the general laws of the state with relation to issuance and sale of bonds, held, that failure of a board of county commissioners strictly to comply with the provisions of the preceding section and this section, as to the form of

resolution to be passed by it providing for the issuance of bonds voted to obtain a federal loan was not fatal to their validity; having followed those provisions as closely as it was possible for it to do, and at the same time conform to the requirements of the federal government, their action was sufficient; so far as not in harmony with the federal requirements, this section and the preceding section must be held inapplicable. *Shekelton v. Toole County et al.*, 97 M 213, 216 et seq., 33 P 2d 531.

Collateral References

Counties \Rightarrow 182.

20 C.J.S. Counties § 275.

16-2030. (4630.16) Publication of notice of sale. The board of county commissioners shall cause such notice to be published once each week for four successive weeks immediately preceding the date of sale in the official newspaper of the county; and the board may in its discretion cause such notice to be published in some financial newspaper published in the city of New York, or in the city of Chicago, or in financial newspapers published in each of said cities.

History: En. Sec. 16, Ch. 188, L. 1931.

16-2031. (4630.17) Notice to the state board of land commissioners. At the same time the notice is sent to the official newspaper of the county for publication the county clerk shall send a copy of such notice to the secretary of the state board of land commissioners and shall thereupon furnish to the said secretary a transcript of the proceedings had for the issuance of bonds, and such other information relating thereto as the secretary may find necessary.

History: En. Sec. 17, Ch. 188, L. 1931.

16-2032. (4630.18) Sale of bonds. The board of county commissioners shall meet at the time and place fixed in the notice to consider bids for the bonds. The bonds shall be sold at not less than par and accrued interest to date of delivery, and each bidder shall specify the form of bonds to be issued, whether amortization or serial, and the rate of interest at which he will purchase the bonds. A bid for amortization bonds shall have the preference over a bid for serial bonds, all other things being equal; and in determining the kind of bonds to be issued the board shall take into consideration not only the rate of interest demanded on each kind, but also all other known elements affecting the interests of the county, and the board shall accept the bid which they shall judge most advantageous to the county; provided, that no bid shall be accepted which will require the bonds to bear a rate of interest exceeding six per centum (6%) per annum. No attorney fees, brokerage or other fees, or commission of any kind shall be paid to any person or corporation for assisting in the proceedings, or in the preparation of the bonds, or in negotiating the sale thereof. The board is authorized to reject any or all bids and to sell the bonds at private sale if they deem it for the best interests of the county; provided, however, that such bonds shall

not bear a greater rate of interest than six per centum (6%) and shall not be sold at less than par and accrued interest to date of delivery.

History: En. Sec. 18, Ch. 188, L. 1931.

Sale of public bonds at less than par or face value. 91 ALR 7.

Collateral References

43 Am. Jur. 373, Public Securities and Obligations, §§ 126-149.

16-2033. (4630.19) Form and execution of bonds. At the time of the sale of the bonds or at a meeting held thereafter the board of county commissioners shall prescribe the form of the bonds, whether amortization bonds or serial bonds, and of the coupons to be attached thereto. Each and every county bond and every coupon attached thereto must be signed by the chairman of the board of county commissioners and the county treasurer and attested by the county clerk, and each bond shall have the county seal affixed thereto; provided, however, that lithographic or engraved facsimiles of the signatures of the chairman of the board, the treasurer and the county clerk may be affixed to the coupons in place of their signatures when such fact is so recited in the bond.

History: En. Sec. 19, Ch. 188, L. 1931.

Collateral References

Counties↪183(2).

20 C.J.S. Counties § 268.

16-2034. (4630.20) Printing of the bonds. Under the direction of the board, the county clerk shall cause the bonds, with coupons thereto attached, to be printed or lithographed at the expense of the county at lowest commercial rates; provided, however, that a purchaser of such bonds may furnish the same to the county for execution if the same is done at his own expense and without expense to the county.

History: En. Sec. 20, Ch. 188, L. 1931.

Printing, lithographing, or other mechanical signature on public bonds, coupons, or other public pecuniary obligation. 94 ALR 768.

Collateral References

Counties↪183(1).

20 C.J.S. Counties § 269.

16-2035. (4630.21) Registration of bonds—copy to be preserved. When duly executed by the officers of the county as herein provided, the bonds shall be registered by the county treasurer in a book provided for that purpose before being delivered to the purchaser. Such registration shall show the number and amount of each bond, the date of issue, date redeemable and date when the same becomes due, the amount of all payments of both principal and interest required to be made on each bond with the dates when the same are required to be paid, and the name and address of the purchaser. The county clerk shall also deliver to the county treasurer an unsigned and cancelled printed copy of a bond of each issue, as so issued and registered, to be preserved in his office.

History: En. Sec. 21, Ch. 188, L. 1931.

Collateral References

Counties↪185.

20 C.J.S. Counties § 274.

16-2036. (4630.22) Delivery of bonds—payment for same. In case the state board of land commissioners is the purchaser of the bonds, the county treasurer shall forward the registered bonds to the secretary of the board who shall cause the same to be delivered to the state treasurer and payment

therefor shall be made in the manner provided by law. In case the bonds are purchased by other investors the county treasurer shall deliver the bonds to the purchaser upon receiving full payment therefor. All moneys arising from the sale of such bonds shall be paid to the county treasurer and shall be immediately available for the purpose or purposes for which the bonds were issued and for no other purpose.

History: En. Sec. 22, Ch. 188, L. 1931.

16-2037. (4630.23) Counties liable on bonds. All bonds issued under the provisions of this act shall be legal and valid obligations of the county issuing the same, and the full faith and credit of such county are hereby irrevocably pledged for the prompt payment of both principal and interest thereof as the same become due.

History: En. Sec. 23, Ch. 188, L. 1931.

References

State ex rel. Siegfriedt v. Carbon County, 108 M 510, 513, 92 P 2d 301.

Collateral References

Counties—184.

20 C.J.S. Counties § 273.

16-2038. (4630.24) Treasurer's certificate as to principal and interest to be paid. Whenever any county has any issue or series of bonds outstanding and there is not sufficient funds on hand available for the payment of the full amount of the interest and principal thereof, the county treasurer of such county shall between the first and fifth days of August in each year while such bonds, or any thereof, remain outstanding and unpaid, make out and deliver to the board of county commissioners of such county a statement showing the amount required to be raised by tax levy during the then current fiscal year for payment of interest and principal becoming due and payable during such fiscal year, or within ninety (90) days thereafter, on each issue or series of bonds outstanding, or if no part of the principal of any such issue or series of bonds will become due and payable within such time, then such statement shall show the amount required to be raised by tax levy during such year for payment of interest becoming due during such time and to place the proper amount in the sinking fund for the payment of the principal of such bonds when they become due, as provided in section 16-2039.

History: En. Sec. 24, Ch. 188, L. 1931.

References

Rogge v. Petroleum County, 107 M 36, 44, 80 P 2d 380.

Collateral References

Counties—187.

20 C.J.S. Counties § 276.

16-2039. (4630.25) Tax. The board of county commissioners, at the time of making the levy of taxes for county purposes, must levy a separate and special tax, upon all taxable property in the county, for the payment of interest on and principal of each series or issue of bonds outstanding, and the tax levy for any one series or issue of bonds must be entirely separate and distinct from such levy for any other series or issue of bonds. The levy made for the purpose of paying interest on and principal of each series or issue of bonds must be high enough to raise an amount sufficient to pay all interest on and so much of the principal, if any, of such bonds as will become due and payable during the then current fiscal year or within ninety (90) days thereafter, as such amount is shown by the treasurer's statement

provided by section 16-2038; and if no part of the principal of such bonds will become due and payable within such time, then such tax levy must be high enough to raise an amount sufficient to pay all interest which will become due and payable during the current fiscal year or within ninety (90) days thereafter, and to also place in the sinking fund for such issue or series of bonds, for the payment of the principal thereof when the same becomes due, an amount not less than a sum produced by dividing the whole amount for which such series or issue of bonds were originally issued by the number of years for which the same were originally issued to run.

History: En. Sec. 25, Ch. 188, L. 1931.

References

State ex rel. Siegfriedt v. Carbon County, 108 M 510, 514, 92 P 2d 301.

Collateral References

Counties \Rightarrow 192.
20 C.J.S. Counties § 281.

16-2040. (4630.26) Liability of members of board of county commissioners. If the board of county commissioners of any county shall fail, neglect or refuse in any year to make a levy sufficient to pay the interest on and principal of any issue or series of bonds, as required by the provisions of section 16-2039, the holder of any bond of such issue or series, or any taxpayer paying taxes on property situated in such county, may apply to the district court of the county issuing such bonds for a writ of mandate to compel the board of county commissioners of such county to make a proper and sufficient levy for such purposes, and if, upon the hearing of such application it shall appear to the satisfaction of the court that the board of county commissioners has failed, neglected or refused to make any levy whatever for such purposes, or has made a levy but that the same is insufficient to raise the amount required to be raised for such purposes under the provisions of section 16-2039, the court shall determine the amount of the deficiency and shall issue a writ of mandate directed to and requiring such board of county commissioners, at the next meeting thereof for the purpose of making and fixing county levies, to raise the amount of such deficiency, which levy shall be in addition to the levy required to be made for the then current fiscal year; provided, that any costs which may be allowed or awarded the petitioner in any such proceeding shall be paid by the members of the board of county commissioners, and shall not be a charge against such county.

History: En. Sec. 26, Ch. 188, L. 1931.

Collateral References

Mandamus \Rightarrow 115.
55 C.J.S. Mandamus § 182.

16-2041. (4630.27) County bond funds. The county treasurer of each county shall keep in his books a special and separate sinking and interest fund account for each series or issue of outstanding bonds issued by his county, and each such fund must at all times show the exact condition thereof. All taxes collected for interest and principal on county bonds shall be placed to the credit of the sinking and interest fund for which the same were levied, and such fund shall not be used for any purpose other than the payment of principal and interest on such bonds so long as any of such bonds remain outstanding. When all bonds of any series or issue, with the interest thereon, have been fully paid, or called in for payment, and there remains in the sinking and interest fund for such series or issue any

amount not required for the payment of such bonds and interest, such excess amount and all amounts subsequently collected for such fund shall be transferred to the general fund of the county, or to the sinking and interest fund of any other series or issue of bonds outstanding that the board of county commissioners may designate.

History: En. Sec. 27, Ch. 188, L. 1931.

References

Rogge v. Petroleum County, 107 M 36, 43, 80 P 2d 380.

Collateral References

Counties \hookrightarrow 186½.

20 C.J.S. Counties § 277.

16-2042. (4630.28) Payment of principal and interest. The county treasurer shall pay from the proper sinking and interest fund the interest and principal of each issue or series of outstanding bonds, as such interest and principal become due and at the place where said bonds are payable, upon the presentation and surrender of the coupon or coupons, bond or bonds to be paid; provided, however, that if the bonds are held by the state of Montana, then all such payments shall be made at the office of the state treasurer, who shall cancel the coupons or bonds and return the same to the county treasurer together with his receipt.

Any and all installments of interest or principal on bonds held by the state and not promptly paid at the office of the state treasurer when due, shall draw interest at the rate of six per centum (6%) per annum from the date due until actually paid, irrespective of the rate of interest on the bonds themselves.

History: En. Sec. 28, Ch. 188, L. 1931.

Collateral References

43 Am. Jur. 482, Public Securities and Obligations, §§ 271-295.

16-2043. (4630.29) Redemption of bonds before maturity. Whenever there is available money in any sinking and interest fund, over and above the amount required for payment of principal and interest, becoming due on the next interest payment date, sufficient to pay and redeem one or more of the outstanding bonds, or coupons in the case of amortization bonds, of the issue or series to which such sinking and interest fund belongs, and such bonds are held by the state of Montana, the county treasurer must apply such available money in payment of as many of such bonds, or coupons in the case of amortization bonds, as the same will pay. Not less than fifteen (15) days before the next interest payment date, the county treasurer must give notice to the state board of land commissioners that on such interest payment date such bond or bonds, or coupon or coupons, will be paid, and the county treasurer, before such interest payment date, must remit to the state treasurer the amount required to pay such bond or bonds, with the interest thereon, or amortization bond coupon or coupons. Upon receipt of such amount the state treasurer must cancel such bond or bonds and all unpaid interest coupons attached thereto, and the coupons paid in the case of amortization bonds, and return the same, with his receipt, to the county treasurer.

Whenever there is available money in any sinking and interest fund, over and above the amount required for payment of principal and interest becoming due on the next interest payment date, sufficient to pay and redeem one or more outstanding optional bonds or coupons in the case of

amortization bonds of the issue or series to which such sinking and interest fund belongs, and which bonds or coupons are not yet due but are then redeemable or will become redeemable on the next interest payment date, and such bonds or coupons are not held by the state of Montana, the county treasurer must apply such available money in payment and redemption of as many of such bonds or coupons in the case of amortization bonds as the same will pay and redeem. The county treasurer must give notice to the holder of such bond, bonds, or coupons, if known to him, or to any bank or financial institution at which such bonds or coupons are payable, at least fifteen (15) days before the next interest payment date, that such bonds and coupons will be paid and redeemed on such date. The county treasurer must also publish in the official newspaper of the county, once a week for two (2) consecutive weeks immediately preceding such interest payment date, a notice that such bond, bonds, or coupons have been called in for redemption and will be paid in full on such interest payment date. If such bonds or coupons are payable at some bank or financial institution the county treasurer must remit to such bank or financial institution, before such interest payment date, an amount sufficient to pay and redeem such bonds or coupons. If such bonds are not presented for payment and redemption on such interest payment date interest thereon shall cease on such date.

All bonds or amortization bond coupons paid and redeemed under the provisions of this section must be paid and redeemed in the numerical order in which the same were issued or become due.

History: En. Sec. 29, Ch. 188, L. 1931;
amd. Sec. 1, Ch. 152, L. 1933; amd. Sec. 1,
Ch. 46, L. 1939.

Collateral References
43 Am. Jur. 474, Public Securities and
Obligations, §§ 260-270.

16-2044. (4630.30) Investment of sinking and interest fund. Whenever there is available money in any sinking and interest fund, over and above the amount required for payment of principal and interest becoming due on the next interest payment date, sufficient to pay and redeem one or more outstanding bonds of the issue or series to which such sinking and interest fund belongs, and such bonds are not held by the state of Montana and are not yet redeemable or due, the county treasurer, at the direction of the board of county commissioners, shall purchase such bond or bonds of such issue or series, if this can be done at not more than par and accrued interest, or at such reasonable premium as the board may feel justified in paying, not in any case exceeding five per centum (5%).

When any bonds have been heretofore or are hereafter purchased with any sinking and interest fund moneys under the provisions of this section such bonds, with attached interest coupons, if not then in the possession of the county treasurer, shall be immediately delivered to him, and such county treasurer shall at once endorse across the face of each such bond the word "Paid" and the date thereof and shall sign such endorsement, and such treasurer shall, without detaching the same, cancel each interest coupon attached to such bonds by endorsing across the face thereof the word "Cancelled" and the date thereof and shall sign such endorsement. After making such endorsements on such bonds and coupons the county treasurer shall enter on the record of registration thereof the date such bonds and coupons were so endorsed by him as being paid and cancelled, with the

numbers and amounts thereof and the dates when the same would have become due and payable if they had not been so purchased. The county treasurer shall then deliver such bonds, with the cancelled coupons attached, to the county clerk with a report showing the numbers thereof and the amount paid on the purchase thereof, and the county clerk shall exhibit such bonds, with attached coupons and report, to the board of county commissioners at their next regular session.

If the board cannot purchase any of the outstanding bonds at such reasonable price then such available money in such sinking and interest fund shall be invested by the county treasurer, under the direction of the board of county commissioners, in other bonds of the county, in warrants of the county or any other county of the state, in bonds or warrants of the state, or in bonds or treasury certificates of the United States; provided, however, that such sinking and interest funds shall only be invested in such securities as will become due and payable at least sixty (60) days before the date when the bonds of the county of such series or issue will become redeemable.

History: En. Sec. 30, Ch. 188, L. 1931;
amd. Sec. 2, Ch. 46, L. 1939.

16-2045. (4630.31) Cancellation of bonds, coupons and warrants. All bonds and interest coupons paid by the county treasurer from time to time shall be cancelled by him, and he shall enter on the record of the registration of such bonds the date of the payment of the same and the several coupons attached thereto, and he shall deliver the same, after such cancellation, to the county clerk, with a report showing the numbers of such bonds and the amounts paid as principal and interest thereon, and the county clerk shall exhibit such bonds and coupons, with such report, to the board of county commissioners at the next regular meeting thereof.

Whenever bonds are issued for the purpose of funding outstanding warrants or refunding outstanding bonds it shall be the duty of the county treasurer to apply the proceeds derived from the sale of such bonds to the payment of such warrants or bonds to be so funded or refunded, and he shall, upon taking up such warrants or bonds, cancel the same, keep a record thereof, and deliver the same to the county clerk, with a report showing the numbers thereof and the amounts paid for principal and interest, and the county clerk shall exhibit such warrants and bonds with such report to the board of county commissioners at the next regular meeting thereof.

History: En. Sec. 31, Ch. 188, L. 1931.

16-2046. (4630.32) Exchange of bonds for amortization bonds. Subject to the approval of the state board of land commissioners the board of county commissioners of any county is hereby vested with the power and authority to issue amortization bonds for the purpose of refunding any outstanding bonds of such county held by the state of Montana and which were not issued either as amortization or serial bonds, whether such bonds are due or not, and to exchange the same for such outstanding bonds. Such amortization bonds shall conform in all respects to the definition of amortization bonds as set forth in section 16-2012, and shall bear interest at such rate as may be agreed upon between the board of county commis-

sioners and the state board of land commissioners, but which shall not exceed six per centum (6%) per annum. Such amortization bonds may be issued and exchanged for such outstanding bonds without submitting the question of issuing the same to an election, and it shall not be necessary to publish any notice of sale of such bonds. This section shall not be construed so as to deprive boards of county commissioners of the right to advertise, sell and issue refunding bonds in the manner provided by this act.

History: En. Sec. 32, Ch. 188, L. 1931.

Collateral References

Counties↪175.

20 C.J.S. Counties § 258.

16-2047. (4630.33) Application to outstanding bonds. All of the provisions of this act with reference to the payment of interest and principal of bonds, redemption and payment thereof, investment of sinking and interest funds, levy of taxes for payment of principal and interest, maintenance of separate sinking and interest funds, and all other provisions of this act which can be made applicable thereto, shall apply to all bonds heretofore lawfully issued by any county under any law or laws of this state, and which bonds shall be outstanding at the time this act takes effect.

History: En. Sec. 33, Ch. 188, L. 1931.

Collateral References

Counties↪186½, 187, 192.

20 C.J.S. Counties §§ 276, 277, 281.

16-2048. (4631) County commissioners to transfer funds. The board is authorized to transfer all surplus moneys that may be on hand in any of the several county funds, except the school fund, to such fund or funds as they may deem for the best interest of the county, or to appropriate said surplus moneys to the payment of the outstanding indebtedness of the county; but no moneys belonging to the school fund must be taken therefrom except for school purposes.

History: En. Sec. 371, 5th Div. Rev. Stat. 1879; re-en. Sec. 775, 5th Div. Comp. Stat. 1887; re-en. Sec. 4256, Pol. C. 1895; re-en. Sec. 2921, Rev. C. 1907; re-en. Sec. 4631, R. C. M. 1921.

Collateral References

Counties↪161.

20 C.J.S. Counties § 231.

References

State v. District Court et al., 62 M 275, 280, 204 P 600.

16-2049. (4632) Petty cash fund. The board of county commissioners, with the approval of the state examiner, may set aside a sum of not less than one hundred dollars (\$100.00) nor more than one thousand dollars (\$1,000.00) out of the general fund, which shall be known as a petty cash fund, for the purpose of paying incidental expenses such as freight, express, postage and other similar items which must be paid in cash at time of delivery, in counties having a county auditor, the county auditor shall be responsible for expenditures from the petty cash fund. In counties not having a county auditor, the county clerk shall be responsible for expenditures from the petty cash fund.

History: En. Sec. 4257, Pol. C. 1895; re-en. Sec. 2922, Rev. C. 1907; re-en. Sec. 4632, R. C. M. 1921; amd. Sec. 1, Ch. 141, L. 1925.

References

State ex rel. Case v. Bolles et al., 74 M 54, 65, 238 P 586.

Repealed by implication Case 74 M 108 76

16-2050. (4639.1) Investment of county moneys in county warrants.

Whenever the county has under its control any moneys, for which there is no immediate demand, in any special fund subject to deposit which in the judgment of the board of county commissioners it would be advantageous to invest in county warrants, the county commissioners are authorized in their discretion to direct the county treasurer to purchase county warrants of the same county, thereafter issued against funds in which there is not sufficient money to pay such county warrants at the time of issuance, and in case of such purchase the county commissioners shall designate the fund or funds, to be so invested, and shall fix the amount thereof, and shall also designate the county warrant or warrants which are to be purchased by such funds. The county clerk and recorder shall thereupon cause to be attached to, or stamped, written or printed upon the warrants so ordered to be purchased a notice to the effect that the county will exercise its preference right to purchase such warrant. The county treasurer shall thereafter when such county warrant is presented to him, purchase the same out of the proper fund as designated by the board of county commissioners, and the warrant so purchased shall be registered as other county warrants, and bear interest as provided by law. When the designated amounts have been invested the county treasurer shall notify the county clerk and recorder. Public funds realized from the sale of bonds by a county for the purpose of constructing public buildings, or for other construction, may be invested in United States certificates of indebtedness, United States treasury notes or United States treasury bonds having a maturity date of one (1) year or less when emergency conditions, beyond the control of the county commissioners, exist which preclude the construction of the projects for which the bonds were issued at the time such investments are made.

History: En. Sec. 1, Ch. 144, L. 1927;
amd. Sec. 1, Ch. 151, L. 1951.

CHAPTER 21

RELEASE OF LIEN OF COUNTY SEED GRAIN LOANS

- Section 16-2101. Release of lien of county seed grain loans.
16-2102. Procedure for executing release.
16-2103. Intent and purpose of act.
16-2104. Cancellation of outlawed seed grain contracts.

16-2101. (4679.1) Release of lien of county seed grain loans. That in all cases where the eight (8) year statute of limitations provided by the laws of Montana for limiting actions on contracts in writing, shall have run against the enforcement of any seed grain contract, note or obligation executed to any county under the provisions of the Montana seed grain act of 1918, sections 4640 to 4679, inclusive, Revised Codes of Montana, 1921, the county commissioners of the several counties of the state, are hereby authorized and empowered to direct the county clerk to execute and deliver on behalf of the county, a release of any real or personal property described in any such seed grain contract, from the lien of said contract and from the lien of any so-called "tax" which has heretofore

been imposed upon said property, real or personal, under the provisions of said grain act.

History: En. Sec. 1, Ch. 121, L. 1935.

NOTE.—Sections 4640 to 4679, R. C. M. 1921, were repealed by Chapter 29, Laws of 1935.

Collateral References

Agriculture 3.

3 C.J.S. Agriculture § 8.

Cross-Reference

Cancellation of obligations barred by limitations, secs. 84-4215 to 84-4217.

16-2102. (4679.2) Procedure for executing release. For the purpose of carrying out this act, the county commissioners shall enter upon their minutes a brief description of the contract in question and an order directing the county clerk to execute a release in accordance with the terms of this act and the county clerk shall thereupon be fully empowered, and it shall be his duty to execute such release on behalf of the county, the same to be acknowledged by him as required by law for the acknowledgment of grants of real property.

History: En. Sec. 2, Ch. 121, L. 1935.

16-2103. (4679.3) Intent and purpose of act. Nothing herein contained shall be deemed as a release, diminution, remittance or postponement of the said amount due the county under said seed grain contract, it being the intent of this act merely to provide for the release and discharge of the technical cloud on the title to property, caused by such contracts in cases where the running of the statute of limitations has precluded the property of recovering the amount due the county.

History: En. Sec. 3, Ch. 121, L. 1935.

16-2104. Cancellation of outlawed seed grain contracts. The county commissioners of the several counties of the state of Montana and all other county officers or departments, affected thereby, are hereby authorized to cancel of record all seed grain contracts, notes or obligations executed to or held by the various counties of the state of Montana under the provisions of sections 4640 to 4679, inclusive, and sections 4680 to 4711, inclusive, Revised Codes of Montana of 1921, which were defaulted and which have been extinguished by reason of the application of the statute of limitations or other laws of the state of Montana.

History: En. Sec. 1, Ch. 120, L. 1945.

NOTE.—Sections 4680 to 4711, R. C. M. 1921, were repealed by Chapter 22, Laws of 1935. See also note to sec. 16-2101.

CHAPTER 22

TAX LEVY FOR ROAD AND BRIDGE CONSTRUCTION

- Section 16-2201. Increased tax levy for road and bridge construction.
 16-2202. Submission of question to electors.
 16-2203. Majority vote required.
 16-2204. Collection of tax.

16-2201. (4713) Increased tax levy for road and bridge construction. The board of county commissioners may, in their discretion, for the purpose of constructing roads and bridges, make an increased levy upon the taxable

property of the county of ten mills or less; provided, that such proportion of the funds derived under the provision of this act as are expended on state and main highways shall be expended under plans approved by the state highway commission.

History: En. Sec. 1, Ch. 160, L. 1919;
re-en. Sec. 4713, R. C. M. 1921.

Collateral References

Highways 124.
40 C.J.S. Highways § 286.

16-2202. (4714) Submission of question to electors. Before such increased levy shall be made, the question shall be submitted to a vote of the people at some general or special election, and shall be submitted in the following form, inserting the number of mills proposed to be levied:

“Shall there be an increased levy of.....mills upon the taxable property of the county of....., state of Montana, for the purpose of constructing roads and bridges?”

<input type="checkbox"/>	Yes.
<input type="checkbox"/>	No.”

History: En. Sec. 2, Ch. 160, L. 1919;
re-en. Sec. 4714, R. C. M. 1921.

Collateral References

Highways 121.
40 C.J.S. Highways § 284.

16-2203. (4715) Majority vote required. A majority of the votes cast shall be necessary to adopt such measure.

History: En. Sec. 3, Ch. 160, L. 1919;
re-en. Sec. 4715, R. C. M. 1921.

16-2204. (4716) Collection of tax. Such levy shall be collected in the same manner as other road taxes are collected.

History: En. Sec. 4, Ch. 160, L. 1919;
re-en. Sec. 4716, R. C. M. 1921.

Collateral References

Highways 128.
40 C.J.S. Highways § 290.

CHAPTER 23

VOTE NECESSARY ON PROPOSAL TO RAISE MONEY

- Section 16-2301. Commissioners not to borrow money except as herein provided.
 16-2302. Commissioners to determine amount necessary.
 16-2303. Notice of election to be given.
 16-2304. Ballots—what to contain.
 16-2305. When loan may be made.
 16-2306. Form of ballots—voting.

16-2301. (4717) Commissioners not to borrow money except as herein provided. The board of county commissioners must not borrow money for any of the purposes mentioned in this title, or for any single purpose to an amount exceeding ten thousand dollars, without the approval of a majority of the electors of the county, and without first having submitted the question of a loan to a vote of such electors; provided, that it shall not be

necessary to submit to the electors the question of borrowing money to refund outstanding bonds, or for the purpose of enabling any county to liquidate its indebtedness to another county incident to the creation of a new county or the change of any county boundary lines.

History: En. Sec. 4270, Pol. C. 1895; re-en. Sec. 2933, Rev. C. 1907; amd. Sec. 1, Ch. 92, L. 1919; re-en. Sec. 4717, R. C. M. 1921.

Emergency Budget for General Relief Not for "Single Purpose" Requiring Electors' Approval

Held, that county commissioners establishing an emergency budget under section 16-1907 for general relief purposes in the amount of \$15,000, without approval of the electors, is not creating an indebtedness or liability for a "single purpose" in excess of \$10,000 without such approval within the inhibition of this section and section 5, article XIII of the Constitution, since the entire debt for all relief purposes cannot be regarded a single purpose, but arises by virtue of many separate and distinct purposes, founded on a duty expressly imposed in normal functioning of county. State ex rel. Nelson v. Board of County Commrs., 111 M 395, 397, 109 P 2d 1106.

Operation and Effect

The meaning of this section and section 5, article XIII of the Constitution, declaring that counties shall not incur any indebtedness in an amount exceeding \$10,000, without the approval of a majority of the electors "voting at an election," etc., coupled with section 16-2305, providing that such a loan may be made "if a majority of the votes cast" is in favor of it, is the same, and the approval of a majority of the electors voting at an election to determine whether a proposed indebtedness shall be incurred was sufficient to legalize a bond issue. Morse v. Granite County, 44 M 78, 95, 96, 119 P 286.

Id. Though the language of this section deviates from that employed in section 5, article XIII of the Constitution, it was evidently enacted in pursuance thereof, and must be held to mean the same.

16-2302. (4718) Commissioners to determine amount necessary. Whenever it is necessary to submit to a vote of the electors of the county the question of making a loan, the board must first determine the amount necessary to be raised.

History: En. Sec. 4271, Pol. C. 1895; re-en. Sec. 2934, Rev. C. 1907; re-en. Sec. 4718, R. C. M. 1921.

Operation and Effect

Upon submitting the question of a bond

The term "incur indebtedness or liability," as used in section 5, article XIII of the Constitution, is not synonymous with the term "borrow money" used in this section; the former having to do with the creation of new indebtedness, while the latter deals with borrowing money through the instrumentality of issuing bonds for any of the purposes mentioned in the title of which the section forms a part. Edwards v. County of Lewis and Clark, 53 M 359, 369, 370, 165 P 297. See also State v. State Board of Examiners, 59 M 557, 567, 197 P 988.

The restraint laid upon the legislature by the constitutional provision, limiting the amount of new indebtedness that a county could incur, did not operate to prevent it from imposing upon counties further limitations in the management of county finances. Edwards v. County of Lewis and Clark, 53 M 359, 379, 165 P 297.

Id. The board of county commissioners cannot borrow money to refund outstanding indebtedness exceeding ten thousand dollars, by the issuance of bonds or otherwise, without having first obtained the approval of the electors of the county.

References

Cited or applied as section 4270, Political Code, before amendment, with succeeding sections, in Tinkel v. Griffin, 26 M 426, 429, 68 P 859; as section 2933, Revised Codes, in State ex rel. Rowe v. Kehoe, 49 M 582, 592, 144 P 162; State ex rel. Cryderman v. Wienrich, 54 M 390, 399, 170 P 942; Parker v. City of Butte, 58 M 531, 533, 193 P 748; State v. Board of Trustees et al., 91 M 300, 306, 7 P 2d 543.

Collateral References

Counties—151.
20 C.J.S. Counties § 226.
14 Am. Jur. 222, Counties, §§ 62, 63.

issue to the voters, the determination by the board of the amount of the issue is a necessary prerequisite to the validity of subsequent proceedings, and in so doing the board may proceed upon its own initiative and determine the necessity of the

loan, without waiting the filing of a petition. *Morse v. Granite County*, 44 M 78, 90, 119 P 286.

The only question which the board of county commissioners was required to submit to the electors upon the proposition of procuring funds to erect a court-house was whether a loan in the amount found necessary should be effected for such purpose. *Morse v. Granite County*, 44 M 78, 91, 92, 93, 119 P 286; *Carlson v. City of Helena*, 39 M 82, 102 P 39, distinguished.

Where the board of county commissioners has determined the amount necessary

for the general purpose of a proposed bond issue, such as the erection of a court-house, it is not required, before submitting the question to a vote, to ascertain the cost of a suitable site for the building, nor that of the necessary furnishings. *Morse v. Granite County*, 44 M 78, 90, 91, 119 P 286.

References

Cited or applied as section 4271, Political Code, in *Tinkel v. Griffin*, 26 M 426, 429, 68 P 859.

16-2303. (4719) Notice of election to be given. Notice of the election, clearly stating the amount to be raised and the object of the loan, must be given, and the election held and conducted, and the returns made in all respects in the manner prescribed by law in regard to the submission of questions to the electors of a locality under the general election law.

History: En. Sec. 4272, Pol. C. 1895; re-en. Sec. 2935, Rev. C. 1907; re-en. Sec. 4719, R. C. M. 1921.

Operation and Effect

This section has no reference to the printed form of the ballot, but merely requires that the provisions of the general election law touching the qualifications of the voters, the appointment of judges and clerks, the secrecy of the ballot, and the method of voting should be observed. *Tinkel v. Griffin*, 26 M 426, 430, 68 P 859.

The order and notice for a special election held for the issuance of bonds to create a highway system, with bridges, which included public ferries, was not invalid because merely stating those purposes generally, and not mentioning ferries, a "ferry" being a mere incident or movable portion of a highway where it crosses a stream. *Reid v. Lincoln County*, 46 M 31, 57, 58, 125 P 429. Distinguished in *State ex rel. Kehoe v. Stromme*, 49 M 25, 27, 139 P 1002.

16-2304. (4720) Ballots—what to contain. There must be written or printed on the ballots the words "For the loan" and "Against the loan," and in voting the elector must vote for the proposition he prefers by making an X opposite the proposition.

History: En. Sec. 4273, Pol. C. 1895; re-en. Sec. 2936, Rev. C. 1907; re-en. Sec. 4720, R. C. M. 1921.

Operation and Effect

In an election held for the incurring of indebtedness by the issue of bonds for the erection and furnishing of a county

A constitutional restriction that a board of county commissioners shall not incur any indebtedness or liability, above a designated amount, is a limitation upon the authority of the board; it has no reference to the power of the people. *Reid v. Lincoln County*, 46 M 31, 57, 125 P 429.

The provision of this section, that the notice of election shall clearly state the object of the loan, means the general object of the loan. It is not necessary to specify all of the details. So long as a reasonably comprehensive notice is given, the courts have no power to declare it insufficient. *Reid v. Lincoln County*, 46 M 31, 57, 125 P 429. See *Mansur v. City of Polson*, 45 M 585, 593, 125 P 1002.

References

Cited or applied as section 2935, Revised Codes, with other sections, in *State ex rel. Cryderman v. Wienrich*, 54 M 390, 399, 170 P 942.

court-house, ballots on which were printed the words "for the loan" and "against the loan," without specifying the nature and purpose of the proposed loan, were held sufficient. *Tinkel v. Griffin*, 26 M 426, 430, 68 P 859; *Reid v. Lincoln County*, 46 M 31, 61, 125 P 429.

16-2305. (4721) When loan may be made. If a majority of the votes cast are in favor of the loan, then the board may make the loan, issuing bonds, or otherwise, as may seem best for the interests of the county.

History: En. Sec. 4274, Pol. C. 1895; re-en. Sec. 2937, Rev. C. 1907; re-en. Sec. 4721, R. C. M. 1921.

ical Code, in Tinkel v. Griffin, 26 M 426, 429, 68 P 859; as section 2937, Revised Codes, in Morse v. Granite County, 44 M 78, 94, 119 P 286.

References

Cited or applied as section 4274, Polit-

16-2306. (4722) Form of ballots—voting. Hereafter whenever, in due course of law, in the manner and form required by law and according to the provisions and requirements of law, any question or proposition of or relating to bonded indebtedness, or of issuing bonds or of refunding, increasing, or creating a bonded indebtedness is submitted, ordered submitted, or to be submitted to the electors of any county, at a general or other election, when, at the same time, candidates for national, state, or county office or offices are to be voted upon or for by the qualified electors of such county, such question or proposition relating to bonds or bonded indebtedness shall not be placed or printed upon the official ballots furnished electors at such election for the purpose of voting for candidates for any office or offices, and containing the names of candidates for office or offices to be voted for at such election, but the county commissioners shall authorize, and the county clerk shall have printed and furnished to election judges and officials in each voting precinct of such county, separate ballots therefor, equal in number to the official ballots so furnished, and containing the names of such candidates for office. Said separate ballots shall be white in color and of convenient size, being only large enough to contain the printing herein required to be done and placed thereon, and shall have printed thereon in fair-sized, legible type and black ink, in one line or more, as required, the words "For" said bonding proposition (stating it and the terms thereof explicitly and at length), and thereunder the words "Against" said bonding proposition (stating it and the terms thereof explicitly and at length in like manner, as above); and there shall be before the word "For" and before the word "Against," each, a square space of sufficient size to place a plain cross or X therein, and such arrangement shall be in this manner:

☐

For (stating propositions.)

☐

Against (stating propositions.)

Such separate ballots shall be kept, stamped, given out, received, counted, returned, and disposed of by election judges in like manner as other official ballots herein referred to. Each qualified elector offering to vote and permitted to vote shall, at the time he is offered by the election judges an official ballot bearing the names of candidates for office, be handed one of the separate ballots above described, and he may then and there, in a booth as provided by law, and not otherwise, vote on such separate ballot for or against said proposition by placing a cross or X before the word "For" or the word "Against," in the vacant square provided therefor; and such separate ballot shall be returned to the election

judges by the voter, with said other official ballot, if the voter chooses to vote for candidates for office and is entitled to do so. The election judges shall deposit said separate ballot on the bonding proposition, separate from the voter's other official ballot, in the ballot-box.

History: En. Sec. 1, p. 13, L. 1901; re-en. Sec. 2938, Rev. C. 1907; re-en. Sec. 4722, R. C. M. 1921.

Operation and Effect

The ballot, in a special election to authorize the issuance of county bonds for a public highway system in a county, which recited that the issue was the bonding of the county in a designated amount to provide funds for a system of public highways, bridges, and free ferries, said bonds

to be payable in twenty years and redeemable in fifteen, was sufficient under this section. *Reid v. Lincoln County*, 46 M 31, 59, 125 P 429. See *Tinkel v. Griffin*, 26 M 426, 429, 68 P 859.

References

Cited or applied as section 2938, Revised Codes, in *Morse v. Granite County*, 44 M 78, 89, 119 P 286; *State v. Board of Trustees et al.*, 91 M 300, 306, 7 P 2d 543.

CHAPTER 24

COUNTY OFFICERS—QUALIFICATIONS—GENERAL PROVISIONS

- Section 16-2401. General qualifications for county office.
 16-2402. Same for district and township offices.
 16-2403. County officers enumerated.
 16-2404. Township officers.
 16-2405. County clerk is clerk of board and ex officio recorder—treasurer is collector of taxes.
 16-2406. County and other officers, when elected and term of office.
 16-2407. Election and terms of county commissioners.
 16-2408. District judges and justices of the peace—election and term of office.
 16-2409. County and township officers may generally appoint deputies at discretion.
 16-2410. Mode of making appointments of assistants.
 16-2411. Official mention of principal officer includes deputies.
 16-2412. Vacancies, how filled.
 16-2413. Keep office at county seat.
 16-2414. What offices to be kept open at county seat.
 16-2415. Civil penalty for misconduct in office attaches to official bond.
 16-2416. County officers may administer oaths.
 16-2417. Absence of county officers from state.
 16-2418. Certain officers prohibited from practicing law, etc.
 16-2419. Classification of counties.
 16-2420. County commissioners to designate class.
 16-2421. Official bonds.
 16-2422. Quarterly inspection of official bonds.
 16-2423. County officers must report fees.
 16-2424. Board of county commissioners must examine reports.
 16-2425. Clerk must report to state auditor.
 16-2426. Auditor must make report.
 16-2427. Penalties.

16-2401. (4723) General qualifications for county office. No person is eligible to a county office who at the time of his election is not of the age of twenty-one years, a citizen of the state, and an elector of the county in which the duties of the office are to be exercised, or for which he is elected.

History: En. Sec. 4310, Pol. C. 1895; re-en. Sec. 2955, Rev. C. 1907; re-en. Sec. 4723, R. C. M. 1921. Cal. Pol. C. Sec. 4101.

Collateral References

Counties—64.
 20 C.J.S. Counties § 102.
 42 Am. Jur. 907, Public Officers, §§ 37 et seq.

Cross-References

Fees, secs. 25-201 to 25-237.
 Salaries, secs. 25-601 to 25-610.

16-2402. (4724) Same for district and township offices. No person is eligible to a district or township office who is not of the age of twenty-one years, a citizen of the state, and an elector of the district or township in which the duties of the office are to be exercised, or for which he is elected.

History: En. Sec. 4311, Pol. C. 1895; re-en. Sec. 2956, Rev. C. 1907; re-en. Sec. 4724, R. C. M. 1921. Cal. Pol. C. Sec. 4102.

16-2403. (4725) County officers enumerated. The officers of a county are:

- A treasurer;
- A county clerk;
- A clerk of the district court;
- A sheriff;
- A county auditor, except in the sixth, seventh, and eighth class counties;
- A county attorney;
- A surveyor;
- A coroner;
- A public administrator;
- An assessor;
- A county superintendent of common schools;
- A board of county commissioners.

History: En. Sec. 4312, Pol. C. 1895; re-en. Sec. 2957, Rev. C. 1907; amd. Sec. 1, Ch. 112, L. 1913; re-en. Sec. 4725, R. C. M. 1921. Cal. Pol. C. Sec. 4103.

(Dissenting opinion, — M —, 273 P 2d 387, 390.)

References

Cited or applied as section 4312, Political Code, before amendment, in State ex rel. Donyes v. Board of Commrs. of Granite County, 23 M 250, 252, 58 P 439; State ex rel. McGinniss v. Dickinson, 26 M 391, 394, 68 P 468; Gagnon v. Jones, 103 M 365, 368, 62 P 2d 683.

Collateral References

Counties ⇨ 61.

20 C.J.S. Counties § 100.

14 Am. Jur. 197, Counties, § 23; 42 Am. Jur. 875, Public Officers, generally.

Cross-Reference

County assessors, duties, sec. 84-412.

Extension Agent

The extension agent is not a county officer who, under section 16-2413 must keep his office at the county seat. Not only does the law bringing into existence the extension agent fail to designate him as a county agent, but this section, which enumerates who are county officers, makes no mention of an extension agent. Turnbull v. Brown, — M —, 273 P 2d 387, 390.

16-2404. (4726) Township officers. The officers of townships are two justices of the peace, two constables, and such other inferior and subordinate officers as are provided for elsewhere in this code, or by the board of county commissioners.

History: En. Sec. 4313, Pol. C. 1895; re-en. Sec. 2958, Rev. C. 1907; re-en. Sec. 4726, R. C. M. 1921. Cal. Pol. C. Sec. 4104.

Collateral References

Towns ⇨ 27.

87 C.J.S. Towns § 60 et seq.

16-2405. (4727) County clerk is clerk of board and ex officio recorder—treasurer is collector of taxes. The county clerk is clerk of the board of county commissioners and ex officio recorder. The treasurer is collector of taxes.

History: En. Sec. 4314, Pol. C. 1895; re-en. Sec. 2959, Rev. C. 1907; re-en. Sec. 4727, R. C. M. 1921. Cal. Pol. C. Sec. 4105.

Collateral References

Counties ⇨ 82, 83.

20 C.J.S. Counties §§ 133, 136.

16-2406. (4728) County and other officers, when elected and term of office. There shall be elected in each county the following county officers who shall possess the qualifications for suffrage prescribed by the constitution of the state of Montana, and such other qualifications as may be prescribed by law:

One county clerk who shall be clerk of the board of county commissioners and ex officio recorder; one sheriff; one treasurer, who shall be collector of the taxes; provided, that the county treasurer shall not be eligible to his office for the succeeding term; one county superintendent of schools; one county surveyor; one assessor; one coroner; one public administrator. Persons elected to the different offices named in this section shall hold their respective offices for the term of four (4) years, and until their successors are elected and qualified.

The county attorneys, county auditors, and all elective township officers, must be elected at each general election as now provided by law. The officers mentioned in this act must take office on the first Monday of January next succeeding their election, except the county treasurer, whose term begins on the first Monday of March next succeeding his election.

Vacancies in all county, township and precinct offices, except that of county commissioners, shall be filled by appointment by the board of county commissioners, and the appointee shall hold his office until the next general election; provided, however, that the board of county commissioners of any county may, in its discretion, consolidate any two or more of the within named offices and combine the powers and the duties of the said offices consolidated; however, the provisions hereof shall not be construed as allowing one (1) office incumbent to be entitled to the salaries and emoluments of two (2) or more offices; provided, further, that in consolidating county offices, the board of county commissioners shall, six (6) months prior to the general election held for the purpose of electing the aforesaid officers, make and enter an order, combining any two (2) or more of the within named offices, and shall cause the said order to be published in a newspaper, published and circulated generally in said county, for a period of six (6) weeks next following the date of entry of said order.

History: En. Sec. 4315, Pol. C. 1895; re-en. Sec. 2960, Rev. C. 1907; re-en. Sec. 4728, R. C. M. 1921; amd. Sec. 1, Ch. 134, L. 1939. Cal. Pol. C. Sec. 4109.

Person Elected to Fill Vacancy Not Elected for Four Years

Plaintiff, who was appointed county sheriff to fill vacancy caused by death of predecessor and at next general election

was elected sheriff, was elected only to fill unexpired term of predecessor and not for a full four year term, notwithstanding ballot did not specify length of time for which candidate sought office. *Bailey v. Knight*, 118 M 594, 168 P 2d 843, 844.

Collateral References

Counties 62, 65.
20 C.J.S. Counties §§ 101, 107.

16-2407. (4729) Election and terms of county commissioners. The election and terms of office of county commissioners are provided for in the constitution.

History: En. Sec. 4316, Pol. C. 1895; re-en. Sec. 2961, Rev. C. 1907; re-en. Sec. 4729, R. C. M. 1921.

Collateral References

Counties 41, 43.
20 C.J.S. Counties §§ 75, 77.

16-2408. (4730) District judges and justices of the peace—election and term of office. The election and terms of office of district judges and justices of the peace are provided for in title 93 of this code.

History: En. Sec. 4317, Pol. C. 1895; re-en. Sec. 2962, Rev. C. 1907; re-en. Sec. 4730, R. C. M. 1921. Cal. Pol. C. Sec. 4110.

48 C.J.S. Judges §§ 12, 20.
30 Am. Jur. 730, Judges, §§ 9 et seq.; 31 Am. Jur. 705, Justices of the Peace.

Collateral References

Judges 3, 7.

16-2409. (4731) County and township officers may generally appoint deputies at discretion. Every county and township officer, except county commissioner and justice of the peace, may appoint as many deputies as may be necessary for the faithful and prompt discharge of the duties of his office, but no compensation or salary must be allowed any deputy except as provided in this code.

History: En. Sec. 4318, Pol. C. 1895; re-en. Sec. 2963, Rev. C. 1907; re-en. Sec. 4731, R. C. M. 1921. Cal. Pol. C. Sec. 4112.

Cross-Reference

Fixing and limitation of salaries, sec. 25-604.

Operation and Effect

The provisions of this and the following section have no application to the appointment by the court of counsel to assist a county attorney in prosecuting persons charged with crime. *State v. Whitworth*, 26 M 107, 117, 66 P 748.

Under section 59-402 and this section held that a county attorney may appoint a deputy to serve without compensation and that such deputy may legally act in the name of his principal in the filing of informations and the prosecution of criminal action. *State v. Crouch*, 70 M 551, 553, 227 P 818.

References

Cited or applied as section 4318, Political Code, with other sections, in *Jobb v. County of Meagher*, 20 M 424, 428, 51 P 1034; In re *Hyde*, 73 M 363, 366, 236 P 248.

16-2410. (4732) Mode of making appointments of assistants. The appointment of deputies, clerks, and subordinate officers of counties, districts, and townships must be made in writing, and filed in the office of the county clerk.

History: En. Sec. 4319, Pol. C. 1895; re-en. Sec. 2964, Rev. C. 1907; re-en. Sec. 4732, R. C. M. 1921. Cal. Pol. C. Sec. 4113.

Cross-References

Reinstatement of employees after discharge from military service, secs. 77-501, 77-701 to 77-708.

Vacations for employees, secs. 59-1001 to 59-1007.

References

Cited or applied as section 4319, Political Code, with other sections, in *Jobb v. County of Meagher*, 20 M 424, 429, 51 P 1034; *State v. Whitworth*, 26 M 107, 117, 66 P 748.

Collateral References

Counties 63; Towns 28.
20 C.J.S. Counties § 101; 87 C.J.S. Towns § 64.

16-2411. (4733) Official mention of principal officer includes deputies. Whenever the official name of any principal officer is used in any law conferring power, imposing duties or liabilities, it includes his deputies.

History: En. Sec. 4320, Pol. C. 1895; re-en. Sec. 2965, Rev. C. 1907; re-en. Sec. 4733, R. C. M. 1921. Cal. Pol. C. Sec. 4114.

Collateral References

Counties 86.
20 C.J.S. Counties § 134.

16-2412. (4734) Vacancies, how filled. All vacancies in county and township offices, except county commissioner, are filled by appointment made by the county commissioners. Appointees hold until the vacancies are filled by election.

History: En. Sec. 4321, Pol. C. 1895; re-en. Sec. 2966, Rev. C. 1907; re-en. Sec. 4734, R. C. M. 1921. Cal. Pol. C. Sec. 4115.

Operation and Effect

The general power to fill vacancies is lodged in the board, and though such power is always to be narrowly construed, in case a vacancy is not specifically provided for, it should be exercised in order to prevent an interregnum in the office and the consequent suspension of the public business. State ex rel. Rowe v. Kehoe, 49 M 582, 590, 144 P 162.

Where a person has been elected to succeed himself as county assessor, but dies after his election and before the beginning of the new term, another person appointed immediately after his death to fill the vacancy holds office only until the expira-

tion of the original term of the deceased, and such appointee must, when the new term begins, surrender the office to one appointed to fill the office for the new term. State ex rel. Dunne v. Smith, 53 M 341, 343, 163 P 784.

Plaintiff, who was appointed county sheriff to fill vacancy caused by death of predecessor and at next general election was elected sheriff, was elected only to fill unexpired term of predecessor and not for a full four year term, notwithstanding ballot did not specify length of time for which candidate sought office. Bailey v. Knight, 118 M 594, 168 P 2d 843, 844.

Collateral References

Counties◊65.

20 C.J.S. Counties § 107.

16-2413. (4735) Keep office at county seat. All county officers must keep their offices at the county seat.

History: En. Sec. 4322, Pol. C. 1895; re-en. Sec. 2967, Rev. C. 1907; re-en. Sec. 4735, R. C. M. 1921. Cal. Pol. C. Sec. 4116.

Application

The county extension agent is not a county officer who, under this section, must keep his office at the county seat. Not only does the law bringing into existence the extension agent fail to designate him as a county agent but section 16-2403, which enumerates who are county officers,

makes no mention of an extension agent. Turnbull v. Brown, — M —, 273 P 2d 387, 390. (Dissenting opinion, — M —, 273 P 2d 387, 390.)

References

Atkinson v. Roosevelt County et al., 66 M 411, 419, 214 P 74.

Collateral References

Counties◊81.

20 C.J.S. Counties § 131.

16-2414. (4736) What offices to be kept open at county seat. The sheriff, the county clerk, the clerk of the district court, the treasurer, and county attorney, the county auditor in counties where such officer is maintained and the county assessor must keep their offices open for the transaction of business from 9 o'clock A. M. until 5 o'clock P. M. continuously every day in the year except holidays and except on Saturday afternoons when said offices may be closed from 12 o'clock noon until 5 o'clock P. M., provided, however, the said offices enumerated herein shall be kept open on Saturday afternoons and on holidays and at other times when the business of said offices requires them to be kept open.

The county superintendent of schools shall keep his office open every day when he is not engaged in the supervision of schools except on holidays and except on Saturday afternoons from 12 o'clock noon until 5 o'clock P. M., provided that when the county superintendent has a deputy or clerk the office shall be kept open every day except holidays and except Saturday afternoons from 12 o'clock noon until 5 o'clock P. M., and provided further that this act shall not apply to counties operating under the county manager plan.

History: En. Sec. 4323, Pol. C. 1895; re-en. Sec. 2968, Rev. C. 1907; re-en. Sec. 4736, R. C. M. 1921; amd. Sec. 1, Ch. 108, L. 1949. Cal. Pol. C. Sec. 4116.

References

Cited in In re Hyde, 73 M 363, 369, 236

P 248; Hart v. Barron, 122 M 350, 204 P 2d 797, 802.

Collateral References

Counties◊82, 83 and other specific topics.

20 C.J.S. Counties §§ 133, 136.

16-2415. (4737) Civil penalty for misconduct in office attaches to official bond. Whenever, except in criminal prosecutions, any special penalty, forfeiture, or liability is imposed on any officer for non-performance or malperformance of official duty, the liability therefor attaches to the official bond of such officer and to the principal and sureties thereon.

History: En. Sec. 4324, Pol. C. 1895; re-en. Sec. 2969, Rev. C. 1907; re-en. Sec. 4737, R. C. M. 1921. Cal. Pol. C. Sec. 4117.

Collateral References
Counties↔96.
20 C.J.S. Counties § 156.

16-2416. (4738) County officers may administer oaths. Every officer mentioned in section 16-2403, and every justice of the peace, may administer and certify oaths.

History: En. Sec. 4325, Pol. C. 1895; re-en. Sec. 2970, Rev. C. 1907; re-en. Sec. 4738, R. C. M. 1921. Cal. Pol. C. Sec. 4118.

Collateral References
Oath↔2.
67 C.J.S. Oaths and Affirmations § 5.

16-2417. (4739) Absence of county officers from state. A county officer must, in no case, other than herein specified, absent himself from the state for a period of more than sixty days, and for no period longer than five (5) days without the consent of the board of county commissioners, and if he does so absent himself he forfeits his office; provided, however, the sheriff, undersheriff, or deputy sheriffs of any county may absent themselves from the state, with the permission of the board of county commissioners, for a period of more than sixty days for the sole purpose of attending a recognized and accredited law enforcement training school without effecting forfeiture of their offices.

History: En. Sec. 4326, Pol. C. 1895; re-en. Sec. 2971, Rev. C. 1907; re-en. Sec. 4739, R. C. M. 1921; amd. Sec. 1, Ch. 92, L. 1947. Cal. Pol. C. Sec. 4120.

Operation and Effect

Where a sheriff predicated his demand for reimbursement for expenses incurred by him for services performed beyond the state line upon his legal rights incident to his position as sheriff, and not upon a contract of employment by the county attorney at whose direction he acted, and he did not show that he first obtained the consent of the board of county commissioners to absent himself from the state,

he was not entitled to recover on the theory that the claim was allowable under authority of subd. 2, section 16-3802, making the county chargeable with expenses necessarily incurred by the county attorney in criminal cases arising within the county. *Brannin v. Sweet Grass Co.*, 88 M 412, 419, 293 P 970.

References

Gullickson v. Mitchell, 113 M 359, 364, 126 P 2d 1106.

Collateral References

Counties↔88.
20 C.J.S. Counties § 139.

16-2418. (4740) Certain officers prohibited from practicing law, etc. Sheriffs, clerks, and constables, and their deputies are prohibited from practicing law or acting as attorneys or counselors-at-law, or having as a partner a lawyer or one who acts as such.

History: En. Sec. 4327, Pol. C. 1895; re-en. Sec. 2972, Rev. C. 1907; re-en. Sec. 4740, R. C. M. 1921. Cal. Pol. C. Sec. 4121.

Collateral References

Clerks of Courts↔65; Sheriffs and Constables↔77, 79.
14 C.J.S. Clerks of Courts § 33 et seq.;
80 C.J.S. Sheriffs and Constables §§ 35, 37.

16-2419. (4741) Classification of counties. For the purpose of regulating the compensation and salaries of all county officers, not otherwise provided for, and for fixing the penalties of officers' bonds, the several counties of this state shall be classified according to that percentage of the true and

full valuation of the property therein upon which the tax levy is made, as follows:

First class. All counties having such a taxable valuation of fifty millions of dollars or over;

Second class. All counties having such a taxable valuation of more than thirty millions and less than fifty millions of dollars;

Third class. All counties having such a taxable valuation of more than twenty millions and less than thirty millions of dollars;

Fourth class. All counties having such a taxable valuation of more than fifteen millions and less than twenty millions of dollars;

Fifth class. All counties having such a taxable valuation of more than ten millions and less than fifteen millions of dollars;

Sixth class. All counties having such a taxable valuation of more than five millions and less than ten millions of dollars;

Seventh class. All counties having such a taxable valuation of less than five millions of dollars;

Provided, however, that there shall be no reclassification of counties until after March 10, 1921, except in counties from which territory has been taken by the creation of new counties since January 1, 1919.

History: En. Sec. 1, Ch. 20, L. 1905; re-en. Sec. 2973, Rev. C. 1907; amd. Sec. 1, Ch. 70, L. 1915; amd. Sec. 1, Ch. 76, L. 1917; amd. Sec. 1, Ch. 24, Ex. L. 1919; re-en. Sec. 4741, R. C. M. 1921.

Constitutionality

Since county officers elected in 1936 were charged with the knowledge that their salaries might be changed by a reclassification of their county as provided by this section, an act in force since 1905, and the provision of art. V, sec. 31 of the constitution, prohibiting the passing of a law increasing or diminishing an official's salary after his election is not violated. State ex rel. Jaumotte v. Zimmerman, 105 M 464, 474, 73 P 2d 548.

Operates Automatically

This statute operates automatically to place a county in a certain class on the ascertainment of such valuation as shown from the records of the assessor's office

in even-numbered years. State ex rel. Jaumotte v. Zimmerman, 105 M 464, 474, 73 P 2d 548.

Operation and Effect

When a portion of one county is attached to another county, the last assessment on the territory so attached may be ascertained by reference to the assessment books of the former county in determining the classification of the latter county as established by the assessed valuation of property within its boundaries. State ex rel. Herford v. Cook, 14 M 201, 202, 36 P 44.

References

State ex rel. Wallace v. Callow, 78 M 308, 254 P 187.

Collateral References

Counties \approx 70.
20 C.J.S. Counties § 110.

16-2420. (4742) County commissioners to designate class. The several boards of county commissioners must, at their regular session in September 1942, and each four years thereafter, make an order designating the class to which such county belongs, as determined by the taxable valuation of such county for the year in which such order is made, under and in accordance with the provisions of section 16-2419, provided that such classification shall not change the government of the county then in existence until the first Monday in January next succeeding.

History: En. Sec. 4331, Pol. C. 1895; re-en. Sec. 3, Ch. 20, L. 1905; re-en. Sec. 2975, Rev. C. 1907; re-en. Sec. 4742, R. C. M. 1921; amd. Sec. 1, Ch. 43, L. 1941.

Directory Only

This statute is directory only, and such an order made in February 1937 instead of September, 1936, substantially complied

with the statute, no substantial rights having been impaired by the board's delay. State ex rel. Jaumotte v. Zimmerman, 105 M 464, 472, 73 P 2d 548.

References

Cited or applied as section 4331, Political Code, before amendment, in State ex rel. McGinnis v. Dickinson, 26 M 391, 392, 68 P 468; as section 2975, Revised

Codes, in State ex rel. Hauswald v. Ellis, 52 M 505, 507, 159 P 414; State ex rel. Fadness v. Eie, 53 M 138, 147, 162 P 164; State ex rel. Wallace v. Callow, 78 M 308, 316, 254 P 187.

Collateral References

Counties↔47.
20 C.J.S. Counties § 81.

16-2421. (4743) Official bonds. The bonds of county officers are fixed by sections 6-201 and 6-202.

History: New section recommended by code commissioner, 1921.

Collateral References

43 Am. Jur. 173, Public Officers, §§ 394-459.

16-2422. (4744) Quarterly inspection of official bonds. At the regular quarterly meetings of all boards of county commissioners in this state, in March and September of each year, every board of county commissioners shall carefully examine all official bonds of all county and township officials of its county, then in force and effect, and investigate the qualifications and financial condition and liability of all sureties thereon and their sufficiency; and, if it appear to the satisfaction of any such board of county commissioners, or a majority of the members thereof, that any surety upon any such bond within and for its county has, since the approval and acceptance of such bond, died or withdrawn therefrom, or removed from the state, or disposed of all of his property in this state, or become insane, insolvent, financially embarrassed, or not good and responsible for the amount of his liability thereon, such board of county commissioners shall immediately cause the clerk of said board, for it, to notify in writing the judge of the district court of that district of its action and conclusion, and all facts in connection therewith and the reasons thereof; and said judge shall forthwith take cognizance thereof and investigate such matter and take steps, by order to show cause or other order, citation, step, or action, as may be necessary to make such bond good and sufficient, according to the requirements of law in the premises, and ample security for the amount thereof.

History: En. Sec. 1, p. 92, L. 1901; re-en. Sec. 2978, Rev. C. 1907; re-en. Sec. 4744, R. C. M. 1921.

16-2423. (4745) County officers must report fees. It is the duty of all county officers, justices of the peace, and constables to make report in writing, under oath, to the board of county commissioners, on the first Mondays of March, June, September, and December, showing in detail all fees, emoluments, and compensation received, and moneys disbursed by them in their official capacity during the quarter preceding the making of each report.

History: Early act on this subject, pp. 232, 233, L. 1891; this section en. Sec. 4336, Pol. C. 1895; re-en. Sec. 2981, Rev. C. 1907; re-en. Sec. 4745, R. C. M. 1921.

Cross-Reference

Disposition of fees, sec. 25-201.

Collateral References

Counties↔80(1); Justices of Peace↔17; Sheriffs and Constables↔71.
20 C.J.S. Counties § 148; 51 C.J.S. Justices of Peace § 16; 80 C.J.S. Sheriffs and Constables § 260.

16-2424. (4746) Board of county commissioners must examine reports. It is the duty of the board to examine the reports, and if the report of an officer is found correct, the chairman of the board must write on the back of the same the words, "Approved and ordered filed," and sign his name thereto. If any report is found not correct, it must be returned to the officer with a statement of its insufficiency, and the report must be corrected and returned to the board, and then, if found correct, filed as aforesaid.

History: En. Sec. 4337, Pol. C. 1895;	Collateral References
re-en. Sec. 2982, Rev. C. 1907; re-en. Sec.	Counties↔80(3).
4746, R. C. M. 1921.	20 C.J.S. Counties § 152.

16-2425. (4747) Clerk must report to state auditor. It is the duty of the clerk of the board, within ten days after the adjournment of each regular session, to report in tabular form to the state auditor from the information contained in such reports, the amounts so received and for what purposes received, and moneys disbursed and for what purposes disbursed, which reports must be filed in the office of the state auditor.

History: En. Sec. 4338, Pol. C. 1895;	Collateral References
re-en. Sec. 2983, Rev. C. 1907; re-en. Sec.	Counties↔89.
4747, R. C. M. 1921.	20 C.J.S. Counties § 141.

16-2426. (4748) Auditor must make report. The state auditor must publish such reports in tabular form in the state auditor's and state treasurer's reports. Such reports shall show, in tabular form, the amounts received and moneys disbursed by each officer in each county, and the sources from which said amounts were received.

History: En. Sec. 4339, Pol. C. 1895;	Collateral References
re-en. Sec. 2984, Rev. C. 1907; re-en. Sec.	States↔73.
4748, R. C. M. 1921.	81 C.J.S. States § 63.

16-2427. (4749) Penalties. Every officer who fails to comply with or violates any of the provisions of this chapter is punishable as provided in section 94-35-141.

History: En. Sec. 4340, Pol. C. 1895;	Collateral References
re-en. Sec. 2985, Rev. C. 1907; re-en. Sec.	Counties↔102.
4749, R. C. M. 1921.	20 C.J.S. Counties § 146.

References

Atkinson v. Roosevelt County et al., 66
M 411, 419, 214 P 74.

CHAPTER 25

CONSOLIDATION OF COUNTY OFFICES

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| Section 16-2501. | Consolidation of county offices—petitions—time for filing—contents. |
| 16-2502. | Examination of petition—hearing and notice. |
| 16-2503. | Conduct of hearing. |
| 16-2504. | Commissioners' right to consolidate offices without petition not limited. |
| 16-2505. | Board's order of consolidation to be published. |
| 16-2506. | Transfer of records on consolidation—duty of officers on consolidation. |
| 16-2507. | Salary and bond of officer upon consolidation. |

16-2501. (4749.1) Consolidation of county offices—petitions—time for filing—contents. At any time not later than seven (7) months before the date of any general election at which any of the county officers enumerated in section five of article XVI of the constitution of this state are to be

elected, a petition in writing may be filed with the board of county commissioners of a county asking for the consolidation of any two or more of said offices by the board of county commissioners of such county. Said petition shall be addressed to the board of county commissioners of such county, shall set forth and state the reasons why such consolidation is believed by the petitioners to be necessary, desirable or for the best interests of the taxpayers of the county, and shall be signed by not less than twenty-five per centum (25%) of the qualified electors of such county whose names appear on the registration records thereof, and each person signing such petition shall place after his name his post office address and voting precinct.

History: En. Sec. 1, Ch. 125, L. 1935.

Collateral References

Counties \Rightarrow 61.

20 C.J.S. Counties § 100.

16-2502. (4749.2) Examination of petition—hearing and notice. Upon the filing of any such petition the board of county commissioners shall cause the county clerk to forthwith examine the same and the registration records of the county and if, after such examination, such county clerk shall report to said board of county commissioners that such petition has been signed by at least twenty-five per centum (25%) of the qualified electors of the county whose names appear on such registration records, said board shall set a date for hearing such petition, which said date for hearing shall be not more than twenty days after the filing of such petition, and the county clerk shall cause notice of such hearing to be published one time in the official newspaper of the county, which publication must be at least ten days before the date set for said hearing, and if there be no newspaper of general circulation printed and published in said county, then such notice must be posted by the county clerk, at least ten days before the date set for such hearing, in three public places in the county. Said notice shall contain a copy of said petition, with the signatures omitted, shall state the time and place fixed for hearing the same, and that on such hearing any taxpayer of the county may appear and be heard in support of or in opposition to said petition.

History: En. Sec. 2, Ch. 125, L. 1935.

16-2503. (4749.3) Conduct of hearing. At the time designated in said notice, the county commissioners shall proceed to hear said petition and the evidence for or against the same. Any taxpayer of the county shall have the right to appear and be heard upon said petition subject however to the right of the county commissioners to limit cumulative testimony and to prevent the undue prolonging of said hearing. Within five days after the date set for said hearing the board of county commissioners shall make such order in relation to the consolidation of said offices as it shall deem proper.

History: En. Sec. 3, Ch. 125, L. 1935.

16-2504. (4749.4) Commissioners' right to consolidate offices without petition not limited. Nothing herein contained shall be deemed as limiting in any manner the discretion of the county commissioners to consolidate the several offices named in the aforesaid article of the constitution, without the filing of the petition provided for in this act.

History: En. Sec. 4, Ch. 125, L. 1935.

16-2505. (4749.5) Board's order of consolidation to be published. Whenever a board of county commissioners shall make an order consolidating two or more of the offices enumerated in section 5 of article XVI of the constitution such board shall enter such order in full on its minutes of proceedings and shall cause such order to be published in a newspaper of general circulation printed and published in said county for a period of six successive weeks next following the date of the making and entry of such order.

History: En. Sec. 5, Ch. 125, L. 1935.

16-2506. (4749.6) Transfer of records on consolidation—duty of officers on consolidation. Whenever any such order is made consolidating two or more of such offices it shall be the duty of the officers holding and occupying such offices, at the end of their terms of office, to deliver and transfer to their successor, or successors, all of the books, files, papers, documents, maps, plats and records of such offices, and the officer or officers receiving the same shall make and deliver proper receipts therefor and shall thereafter be the custodian or custodians of such books, files, papers, documents, maps, plats and records and shall perform all of the duties and acts imposed on such consolidated offices as required of them by law and shall make and execute, with full legal force and effect, all certificates, official statements, official reports, affidavits and other instruments required to be made by the laws of this state by either or any of the officers whose offices have been so consolidated; provided, that if the laws of this state, or the rules, regulations, orders or directions of any officer or department of the state shall require each of two offices, which are consolidated, to keep duplicate or similar records, books, or accounts, after such consolidation such consolidated office shall keep but one set of such records, books or accounts.

History: En. Sec. 6, Ch. 125, L. 1935.

16-2507. (4749.7) Salary and bond of officer upon consolidation. When two or more offices are consolidated under a single officer such officer shall receive as salary an amount to be determined by the board of county commissioners of the county, but which amount must not be more than twenty per cent (20%) higher than the highest salary provided by law to be paid to any officer whose duties he is required to perform by reason of such consolidations; provided that the board of county commissioners shall, at the regular meeting of such board in June 1942, and at the regular meeting of such board in June of each fourth year thereafter, adopt a resolution fixing the salary of such officer for the term beginning with the first Monday in January immediately following the adoption of such resolution; provided further, that such officer shall give a bond in an amount equal to the highest bond required by law of any officer whose duties he is required to perform by reason of such consolidation; and provided further, that where county offices are consolidated as hereinbefore described, that the officer of the consolidated offices shall have any deputies they may appoint who shall be approved by the board of county commissioners; and provided further, that the board of county commissioners shall determine the number of deputies, stenographers, and clerks the said officers may appoint.

History: En. Sec. 7, Ch. 125, L. 1935;
amd. Sec. 1, Ch. 107, L. 1937; amd. Sec. 1,
Ch. 104, L. 1941.

Collateral References
Counties \Rightarrow 70.
20 C.J.S. Counties § 110.

CHAPTER 26

COUNTY TREASURER—DUTIES AS TO WARRANTS AND OTHER COUNTY FINANCES

- Section 16-2601. Duties of county treasurer.
 16-2602. Receipt to be given by county treasurer.
 16-2603. Mode of redeeming warrants.
 16-2604. Registry of warrants—interest.
 16-2605. Notice of redemption of warrants.
 16-2606. What it must state and how published.
 16-2607. Priority in payment of warrants.
 16-2608. Warrants must be registered in name of payee.
 16-2609. Funds reserved sixty days therefor.
 16-2610. Notation on warrant of interest paid.
 16-2611. Settlements, how made—monthly and annually.
 16-2612. Treasurer's report to commissioners—settlement.
 16-2613. Penalty for not reporting.
 16-2614. When he must sue county attorney.
 16-2615. When he must sue coroner.
 16-2616. Disposition of property received from coroner.
 16-2617. Money from coroner in treasury may be demanded within six years.
 16-2618. Deposit of public funds by county, city and town treasurers.
 16-2619. Cashier's checks of federal reserve banks as security for deposit of public funds.
 16-2620. Supplementary nature of act.
 16-2621. State examiner to sign trustee and deposit receipts.
 16-2622. County commissioners may suspend treasurer.
 16-2623. No commissions allowed.
 16-2624. Books and vouchers subject to inspection.
 16-2625. Must permit state examiner and county clerk to examine books.
 16-2626. His duty as collector of taxes.

16-2601. (4750) Duties of county treasurer. The county treasurer must:

1. Receive all moneys belonging to the county, and all other moneys by law directed to be paid to him, safely keep the same, and apply and pay them out, rendering account thereof as required by law;

2. Keep an account of the receipt and expenditures of all such moneys in books provided for the purpose, in which must be entered the amount, the time when, from whom, and on what account all moneys were received by him; the amount, time when, to whom, and on what account all disbursements were made by him;

3. So keep his books that the amount received and paid out on account of separate funds or specific appropriations is exhibited in separate and distinct accounts, and the whole receipts and expenditures shown in one general or cash account;

4. Enter no moneys received for the current year on his account with the county for the past fiscal year, until after his annual settlement for the past year has been made with the county clerk;

5. Disburse the county moneys only on county warrants issued by the county clerk, based on orders of the board of county commissioners, or as otherwise provided by law;

6. Keep all school moneys in a separate fund, and keep a separate account of their disbursement to the several school districts which are entitled to receive them, according to the apportionment of the county superintendent of common schools;

7. Notify the county superintendent of the amount of the county school fund in the county treasury subject to apportionment, whenever required, and inform him of the amount of school moneys belonging to any other fund subject to apportionment;

8. Pay all warrants drawn on county or district school moneys, in accordance with the provisions of law, whenever such warrants are countersigned by the district clerk and properly indorsed by the holders;

9. Make, annually, during the month of September of each year, a financial report for the last preceding year ending with August 31st, to the county superintendent in such form as may be required by him.

History: En. Sec. 4350, Pol. C. 1895; re-en. Sec. 2986, Rev. C. 1907; re-en. Sec. 4750, R. C. M. 1921. Cal. Pol. C. Sec. 4144.

Cross-References

Annual tax settlement, sec. 84-448.

Bond, sec. 6-201.

County bond issues, duties, secs. 16-2001 to 16-2050.

County high school board of trustees, treasurer, sec. 75-4107.

Deputies, sec. 16-3701.

Drainage districts, duties, secs. 89-2309, 89-2401 to 89-2404, 89-2501, 89-4108.

Hail insurance taxes, duty to collect, sec. 82-1509.

Jury commission, member, sec. 93-1401.

License taxes, duties, sec. 84-2701 et seq.

Motor vehicle registration, duties, secs. 53-114 to 53-124.

Rural improvement districts, duties, secs. 16-1620, 16-1622, 16-1624.

Salary, sec. 25-605.

Sale of unclaimed stolen property, sec. 94-9705.

School district bond funds, record, sec. 75-3928.

School moneys, custody, sec. 75-3722.

Tax collector, secs. 16-2405, 84-4101 et seq.

General Provision Regarding Duties

The provisions of this section are mandatory. The use of the word "only" in the fifth subdivision limits the power of the treasurer to pay out the money of the county, both as to the amount and the precedent conditions of payment. In re Farrell, 36 M 254, 261, 92 P 785. See also County of Silver Bow v. Davies, 40 M 418, 426, 107 P 81.

The duty of a county treasurer to account for and pay over the moneys paid directly to him by members of the public, as revenue due the county, or directed by a court or by statute to be deposited with him for safe-keeping, is clearly statutory, and his liability for dereliction in this re-

spect is a liability created by statute. Gallatin County v. United States F. & G. Co., 50 M 55, 62, 144 P 1085.

The county treasurer is a ministerial officer, without authority other than that conferred on him by statute, and he is not required to perform any duties not imposed on him by law. Rosebud County v. Smith et al., 92 M 75, 80, 9 P 2d 1071.

Money from Sale of School Building—Resulting Trust

Complaint for writ of mandate by a county high school against the county treasurer to compel payment of money realized from the sale of a building purchased with high school funds and sold by county commissioners as trustee when no longer needed for school purposes, held to have stated a cause of action on the theory of a resulting trust, although the pleading did not ask that such a trust be declared, and was sufficient to authorize issuance of the writ directing defendant to deposit the sale price to the credit of plaintiff; incorporation as a county high school district after purchase of building did not affect its right. State ex rel. Gallatin County High School v. Brandenburg, 107 M 199, 202, 82 P 2d 593.

Payment of Juror's Certificates

The phrase, "or as otherwise provided by law," in the fifth subdivision of this section, includes juror's certificates, and the restrictions as to the power of payment by the treasurer applies as well to them as to other claims against the county. In re Farrell, 36 M 254, 261, 92 P 785; County of Silver Bow v. Davies, 40 M 418, 426, 107 P 81.

Warrants

The owner of a warrant which the treasurer refuses to pay cannot obtain a money judgment against the county in an action on the warrant. Greeley v. Cascade County, 22 M 580, 588, 57 P 274.

Where the petition for writ of mandate to compel a county treasurer to register warrants shows on its face that the warrants were not properly made out, signed or executed, it does not state facts sufficient to justify the granting of the writ, since such a warrant is no warrant at all, and upon its presentation the officer may entirely disregard it. *State ex rel. Lockwood v. Tyler*, 64 M 124, 130, 208 P 1081.

As against the contention that holders of county bonds cannot be required to accept county warrants in payment of principal and interest due on the bonds, held, that such is the manner in which under this section, counties discharge their obligations; and if there be no funds with which to pay the warrants but no showing that the bondholders cannot cash them

without a discount, it cannot be said that the obligation of the county to such holders is in any manner impaired. *Great Northern Railway Co. v. Phillips County* 112 M 542, 544, 118 P 2d 754.

References

Cited or applied as section 2986, Revised Codes, in *Gallatin County v. United States F. & G. Co.*, 50 M 55, 62, 144 P 1085; *State v. McGraw*, 74 M 152, 157, 240 P 812.

Collateral References

Counties \Rightarrow 90.
20 C.J.S. Counties § 143.

Mandamus to compel payment of warrant. 98 ALR 442.

16-2602. (4751) Receipt to be given by county treasurer. When any money is paid to the county treasurer, he must issue a receipt for such money in triplicate, the original of which shall be delivered to the person paying the same, the duplicate of which shall be delivered to the county clerk and the triplicate shall be retained in his office.

History: En. Sec. 4351, Pol. C. 1895; 4751, R. C. M. 1921; amd. Sec. 1, Ch. 92, re-en. Sec. 2987, Rev. C. 1907; re-en. Sec. L. 1923. Cal. Pol. C. Sec. 4146.

16-2603. (4752) Mode of redeeming warrants. When a warrant is presented for payment, if there is money in the treasury for that purpose, he must pay the same, and write on the face thereof "Paid," the date of payment, and sign his name thereto.

History: En. Sec. 4352, Pol. C. 1895; re-en. Sec. 2988, Rev. C. 1907; re-en. Sec. 4752, R. C. M. 1921. Cal. Pol. C. Sec. 4147.

Collateral References

Counties \Rightarrow 168(5).
20 C.J.S. Counties § 252.

16-2604. (4753) Registry of warrants—interest. When any county warrant, any high school warrant or any school district warrant hereafter issued is presented to the treasurer for payment and the same is not paid for want of funds, the treasurer must endorse thereon, "not paid for want of funds," annexing the date of presentation, and sign his name thereto; and from that time until paid the warrant shall bear interest at four (4%) per cent per annum.

History: Ap. p. Sec. 4353, Pol. C. 1895; amd. Sec. 2, p. 99, L. 1899; re-en. Sec. 2989, Rev. C. 1907; re-en. Sec. 4753, R. C. M. 1921; amd. Sec. 2, Ch. 15, L. 1941; amd. Sec. 1, Ch. 53, L. 1945. Cal. Pol. C. Sec. 4148.

Power to Issue Anticipatory Warrants

Under sections 16-2604 to 16-2610, counties have the power to issue anticipatory warrants. *State ex rel. Silver Bow County v. Brandjord*, 107 M 231, 235, 82 P 2d 589.

References

State ex rel. Case v. Bolles et al., 74 M 54, 65, 238 P 586; *Rosebud County v. Smith et al.*, 92 M 75, 80, 9 P 2d 1071; *State ex rel. Blenkner v. Stillwater County*, 104 M 387, 391, 66 P 2d 788; *Great Northern Railway Co. v. Phillips County*, 112 M 542, 545, 118 P 2d 754.

16-2605. (4754) Notice of redemption of warrants. When there are sufficient moneys to pay the warrants drawing interest, the treasurer must give notice in some newspaper published in his county, or, if none is published, then by written notice posted upon the courthouse door, stating

therein that he is ready to pay such warrants. From the first publication or posting of such notice such warrants cease to draw interest.

History: En. Sec. 4354, Pol. C. 1895; re-en. Sec. 2990, Rev. C. 1907; re-en. Sec. 4754, R. C. M. 1921. Cal. Pol. C. Sec. 4149.

rel. DeKalb v. Ferrell, County Treasurer, 105 M 218, 226, 70 P 2d 290; State ex rel. Silver Bow County v. Brandjord, 107 M 231, 235, 82 P 2d 589.

References

State ex rel. Case v. Bolles et al., 74 M 54, 65, 238 P 586; Rosebud County v. Smith et al., 92 M 75, 80, 9 P 2d 1071; State ex

Collateral References

Counties⇒168(1, 4).
20 C.J.S. Counties §§ 252, 255.

16-2606. (4755) What it must state and how published. In advertising warrants under the provisions of this section in any newspaper, the treasurer must not publish the warrants in detail, but give notice only that county warrants presented for payment prior to such date, stated in the notice, are payable. When a part only of the warrants presented for payment on the same day are payable, the treasurer must designate such payable warrants in the advertisement.

History: En. Sec. 4355, Pol. C. 1895; re-en. Sec. 2991, Rev. C. 1907; re-en. Sec. 4755, R. C. M. 1921. Cal. Pol. C. Sec. 4150.

References

State ex rel. Case v. Bolles et al., 74 M 54, 65, 238 P 586.

16-2607. (4756) Priority in payment of warrants. Warrants drawn on the treasury and properly attested are entitled to preference as to payment out of moneys in the treasury properly applicable to such warrants according to the priority of time in which they were presented. The time of presenting such warrants must be noted by the treasurer, and upon the receipts of moneys into the treasury not otherwise appropriated, he must set apart the same, or so much thereof as is necessarily for the payment of such warrants.

History: Ap. p. Sec. 94, p. 452, Cod. Stat. 1871; amd. Sec. 1, p. 68, L. 1874; re-en. Sec. 440, 5th Div. Rev. Stat. 1879; re-en. Sec. 893, 5th Div. Comp. Stat. 1887; amd. Sec. 4356, Pol. C. 1895; re-en. Sec. 2992, Rev. C. 1907; re-en. Sec. 4756, R. C. M. 1921. Cal. Pol. C. Sec. 4151.

54, 65, 238 P 586; State ex rel. Blenkner v. Stillwater County, 104 M 387, 391, 66 P 2d 788; State ex rel. DeKalb v. Ferrell, 105 M 218, 226, 70 P 2d 290.

Collateral References

Counties⇒168(3).
20 C.J.S. Counties § 254.

References

State ex rel. Case v. Bolles et al., 74 M

16-2608. (4757) Warrants must be registered in name of payee. The county treasurer must not register any county order or warrant in the name of any person other than the payee thereof, except at the request of such payee, or his agent, assignee, or legal representative, whose authority must be produced to the treasurer in writing, and he must not pay any order or warrant except to the payee thereof, or to his agent, assignee, or legal representative, whose authority must be in writing and delivered to him, and must be returned with such order or warrant, when paid, to the board of county commissioners.

History: En. Sec. 98, p. 453, Cod. Stat. 1871; re-en. Sec. 444, 5th Div. Rev. Stat. 1879; re-en. Sec. 897, 5th Div. Comp. Stat. 1887; re-en. Sec. 4357, Pol. C. 1895; re-en. Sec. 2993, Rev. C. 1907; re-en. Sec. 4757, R. C. M. 1921.

Collateral References

Counties⇒165, 168(1).
20 C.J.S. Counties §§ 249, 252.

16-2609. (4758) **Funds reserved sixty days therefor.** If such warrants be not re-presented for payment within sixty days from the time of the notice hereinbefore provided for is given, the fund set aside for the payment of the same must be by the treasurer applied to the payment of unpaid warrants next in order of registry. The board of county commissioners may, on application and presentation of warrants properly indorsed, which have been advertised, pass an order directing the treasurer to pay them out of any money in the treasury not otherwise appropriated.

History: En. Sec. 4358, Pol. C. 1895; re-en. Sec. 2994, Rev. C. 1907; re-en. Sec. 4758, R. C. M. 1921. Cal. Pol. C. Sec. 4152.

Operation and Effect

While county warrants are not negotiable instruments in the sense of the law-merchant, and the transferee takes them subject to all legal and equitable defenses to them which existed in the hands of the payee, failure of the transferee to re-present a registered warrant within sixty days after it was called for payment (this section) does not render it invalid and may not be relied upon as a defense in an action to compel payment. State ex rel. Case v. Bolles et al., 74 M 54, 64, 65, 238 P 586.

Id. Held, that the word "may" appearing in this section, which provides that the board of county commissioners may on application of the holder of a warrant who failed to re-present a warrant within sixty days after issuance of the call for its payment, order the county treasurer to pay it, means must or shall.

Id. The only penalty a holder of a registered warrant incurs, under this section, for failure to re-present it for payment within sixty days after issuance of the call is loss of interest thereon.

Id. Where the board of county commissioners had wrongfully refused to issue an order for the payment of a warrant not re-presented for payment until after the sixty-day period provided for in this section, had expired, and thereafter the bank in which its funds were deposited became insolvent, the county was not dis-

charged from liability thereon under section 55-717, by the holder's neglect to make timely demand for payment, since the detriment suffered by it was traceable to its improper refusal and not to the holder's failure to act.

Failure to present a warrant for payment after it had been called is a complete defense to mandamus action to compel payment, but holder of the warrant need not anticipate and negative such defense. State ex rel. Blenkner v. Stillwater County, 104 M 387, 392, 66 P 2d 788.

Relator held a registered warrant and the fund out of which it was payable had sufficient moneys to cover the face value of all registered warrants, but insufficient to pay them with accrued interest. It did not appear whether the treasurer had called the warrants for payment as provided in section 16-2605 or whether the 60 days specified in this section had elapsed. Held, writ of mandate ordering the treasurer to pay relator's warrant with interest was improper in the absence of a showing that there were sufficient funds to pay prior warrants and interest thereon entitled to payment, and to pay relator's also. State ex rel. DeKalb v. Ferrell, 105 M 218, 226, 70 P 2d 290.

References

Rosebud County v. Smith et al., 92 M 75, 80, 9 P 2d 1071.

Collateral References

Counties⊕168(3).
20 C.J.S. Counties § 252.

16-2610. (4759) **Notation on warrant of interest paid.** When the treasurer pays any warrant on which any interest is due, he must note on the warrant the amount of interest paid thereon, and enter on his account the amount of such interest distinct from the principal.

History: En. Sec. 4359, Pol. C. 1895; re-en. Sec. 2995, Rev. C. 1907; re-en. Sec. 4759, R. C. M. 1921. Cal. Pol. C. Sec. 4153.

Collateral References

Counties⊕168(4).
20 C.J.S. Counties § 252.

16-2611. (4760) **Settlements, how made—monthly and annually.** The treasurer must settle his accounts relating to the collection, care and disbursement of public revenue, of whatsoever nature and kind, with the county clerk, on the first Monday of each month. For the purpose of making such settlements he must make out a statement, under oath, of the amount

of money or other property received prior to the period of such settlement, the sources whence the same was derived, the amount of payments or disbursements, and to whom, with the amount remaining on hand. He must, in such settlements, deposit all warrants redeemed by him and take the county clerk's receipt therefor. He must make a full settlement of all accounts with the county clerk, annually, on the first Monday of January, in the presence of the county commissioners, who have control thereof.

History: En. Sec. 4360, Pol. C. 1895;
re-en. Sec. 2996, Rev. C. 1907; re-en. Sec.
4760, R. C. M. 1921. Cal. Pol. C. Sec. 4154.

Collateral References
Counties \Rightarrow 94(1).
20 C.J.S. Counties § 150.

16-2612. (4761) Treasurer's report to commissioners—settlement. Each county treasurer must make a detailed report, at every regular meeting of the board of county commissioners of his county, of all moneys received by him and the disbursement thereof, and of all debts due to and from the county, and of all other proceedings in his office, so that the receipts into the treasury and the amount of disbursements, together with the debts due to and from the county, may clearly and distinctly appear.

On the first Monday of January, April, July and October of each year the county treasurer must settle with the board of county commissioners for all moneys collected and on said days must deliver to said board of county commissioners affidavits verifying the reconciliation of the balance on hand in the county treasury. After the approval of such statements and the accompanying affidavits, one (1) copy of such report shall be filed with the county clerk of said county, and one (1) copy shall be retained by the county treasurer.

History: En. Sec. 4361, Pol. C. 1895;
re-en. Sec. 2997, Rev. C. 1907; re-en. Sec.
4761, R. C. M. 1921; amd. Sec. 1, Ch. 75,
L. 1941. Cal. Pol. C. Sec. 4155.

Collateral References
Counties \Rightarrow 90.
20 C.J.S. Counties § 143.

References

State v. McGraw, 74 M 152, 156, 240 P 812.

16-2613. (4762) Penalty for not reporting. If any county treasurer neglects or refuses to settle or report, as required in the preceding section, he forfeits and must pay to the county the sum of five hundred dollars for every such neglect or refusal, and the board of county commissioners must institute suits for the recovery thereof.

History: En. Sec. 4362, Pol. C. 1895;
re-en. Sec. 2998, Rev. C. 1907; re-en. Sec.
4762, R. C. M. 1921. Cal. Pol. C. Sec. 4156.

16-2614. (4763) When he must sue county attorney. If the county attorney refuses or neglects to account for and pay over money received by him, as required by the fifth subdivision of section 16-3101, the county treasurer must bring an action against him for the recovery thereof in the name of the county, and may recover in such action, in addition to the amount so received, fifty per cent thereon by way of damages.

History: En. Sec. 4363, Pol. C. 1895;
re-en. Sec. 2999, Rev. C. 1907; re-en. Sec.
4763, R. C. M. 1921. Cal. Pol. C. Sec. 4157.

Collateral References
Counties \Rightarrow 217.
20 C.J.S. Counties § 328.

16-2615. (4764) When he must sue coroner. If the coroner, or any justice of the peace acting as coroner, fails to deliver to the treasurer, within thirty days after any inquest upon a dead body, all money and property found upon such body, unless claimed in the meantime by the public administrator or other legal representative of the decedent, as required by section 16-3403, the treasurer must proceed against the coroner, or justice acting as coroner, to recover the same by civil action in the name of the county.

History: En. Sec. 4364, Pol. C. 1895;
re-en. Sec. 3000, Rev. C. 1907; re-en. Sec.
4764, R. C. M. 1921. Cal. Pol. C. Sec. 4158.

16-2616. (4765) Disposition of property received from coroner. The treasurer, upon receiving from the coroner, or justice acting as coroner, money found on a dead body, must place it to the credit of the county. On receiving other property in like manner he must, within thirty days, sell it at public auction upon reasonable public notice, and must in like manner place the proceeds to the credit of the county.

History: En. Sec. 4365, Pol. C. 1895;
re-en. Sec. 3001, Rev. C. 1907; re-en. Sec.
4765, R. C. M. 1921. Cal. Pol. C. Sec. 4159.

Collateral References
Coroners \Rightarrow 20.
18 C.J.S. Coroners § 25.

16-2617. (4766) Money from coroner in treasury may be demanded within six years. If the money in the treasury is demanded within six years by the legal representatives of the decedent, the treasurer must pay it to them, after deducting the fees and expenses of the coroner and of the county in relation to the matter; or the same may be so paid at any time thereafter upon the order of the board of county commissioners.

History: En. Sec. 4366, Pol. C. 1895;
re-en. Sec. 3002, Rev. C. 1907; re-en. Sec.
4766, R. C. M. 1921. Cal. Pol. C. Sec. 4160.

16-2618. (4767) Deposit of public funds by county, city and town treasurers. (1) It shall be the duty of all county, city and town treasurers to deposit all public moneys in their possession and under their control in any solvent bank or banks located in the county, city or town of which such treasurer is an officer, subject to national supervision or state examination as the board of county commissioners in the case of a county, or of the council in the case of a city or town, may designate, and no other. The sums so deposited shall bear uniform interest at the rate of not more than two per centum (2%) per annum, payable quarter annually. The treasurer shall take from such bank such security as the board of county commissioners, in the case of a county, or the council, in the case of a city or town, may prescribe, approve and deem fully sufficient and necessary to insure the safety and prompt payment of all such deposits on demand, together with the interest thereon.

(2) Said board of county commissioners, city or town council may require security for only such portion of deposits as is not guaranteed or insured according to law. Such securities shall consist of bonds of some surety company authorized to do business in the state of Montana, or bonds guaranteed by such companies directly or indirectly, bonds and securities of the United States government and its dependents, bonds and warrants of

the state of Montana or of any county, city, town or school district of Montana, Federal Land Bank bonds, bonds of other states and counties of other states, bonds of the Dominion of Canada, and Canadian Provinces, and other Canadian bonds guaranteed by the Canadian government or provinces thereof, personal bonds, as hereinafter provided, when accompanied by a sworn statement of the resources and liabilities of each of the sureties thereon, which shall be attached and made a part of the bond and bonds issued in the United States of America, which are quoted on the New York market, which shall be acceptable at not to exceed ninety per centum (90%) of such market quotation.

(3) When negotiable securities are furnished, such securities may be placed in trust and the trustee's receipt may be accepted in lieu of the actual securities when such receipt is in favor of the treasurer, his successors and the state of Montana, and the form of receipt and the trustee have been approved by the state examiner. All warrants or other negotiable securities must be properly assigned or endorsed in blank. It shall be the duty of the board of county commissioners in the case of county funds, or the council in the case of funds of a city or town, upon the acceptance and approval of any of the above mentioned bonds or securities, to make a complete minute entry of such acceptance and approval upon the record of their proceedings, and such bonds and securities shall be reapproved at least quarter annually thereafter.

(4) When more than one bank is available in any county, for the deposit of county funds, or in any city or town for the deposit of city or town funds, such deposits shall be distributed ratably among all of such banks qualifying therefor, substantially in proportion to the paid-in capital and surplus of each such bank willing to receive such deposits under the terms of this act, and it shall be the duty of said county, city or town treasurer to prorate all such deposits among all of the banks qualified to receive the same as in this act provided, to the end that an equitable distribution of such deposits shall be maintained.

(5) Whenever it shall come to the attention of the state examiner that the funds of any county, city or town are not properly distributed as provided in this act, the state examiner shall order the treasurer of such county, city or town to distribute said funds in accordance herewith, and if such treasurer shall refuse or neglect to comply with such order, it shall be the duty of the state examiner to institute proceedings against such treasurer at the cost of the county, city or town of which such treasurer is an officer, on the official bond of such treasurer. If no such bank exists in the county, city or town, or if any bank or banks existing therein fails or refuses to qualify under the terms of this act to receive such deposits, then and in such case, or in either of such cases, such moneys as have not been accepted by any bank or banks within said county, city or town, shall be deposited under the terms of this act, in the bank or banks most convenient to such county, city or town, willing to accept such deposits under the terms of this act, and qualified as above provided. Any bank or banks receiving such deposits, shall, through its president and cashier, make a statement quarter annually of account, under oath, showing all such moneys that have been deposited with such bank during the quarter, the amount of

daily balance in dollars, and the amount of interest by such bank or banks credited or paid therefor, and showing that neither such bank nor any officer thereof, nor any person for it, has paid or given any consideration or emolument whatsoever to the treasurer or to any other person other than the interest provided for herein, for or on account of the making of such deposits, with any such bank. All such deposits shall be subject to withdrawal by the treasurer in such amounts as may be necessary from time to time, and no deposit of funds shall be made, or permitted to remain in any bank, until the security for such deposits shall have been first approved by the board of county commissioners in the case of county funds, or by the council in the case of city or town funds, and delivered to the treasurer.

(6) All interest paid and collected on such deposits shall be credited to the general fund of the county, city or town to whose credit such funds are deposited. Where moneys shall have been deposited in accordance with the provisions of this act, the treasurer shall not be liable for loss on account of any such deposit that may occur through damage by the elements, or for any other cause or reason occasioned through means other than his own neglect, fraud, or dishonorable conduct.

(7) No personal bond shall be accepted except when such bond is for the purpose of renewing a personal bond now in effect, and from and after December 31, 1930, personal bonds shall not be considered as acceptable security; provided, further, that from and after the passage and approval of this act, no new or additional deposit accounts shall be opened by any treasurer under any personal bond.

History: Ap. p. Sec. 4367, Pol. C. 1895; amd. Sec. 1, Ch. 5, L. 1903; amd. Sec. 3003, Rev. C. 1907; amd. Sec. 1, Ch. 88, L. 1913; re-en. Sec. 4767, R. C. M. 1921; amd. Sec. 1, Ch. 89, L. 1923; amd. Sec. 1, Ch. 137, L. 1925; amd. Sec. 1, Ch. 134, L. 1927; amd. Sec. 1, Ch. 49, L. 1929; amd. Sec. 1, Ch. 23, Ex. L. 1933. Cal. Pol. C. Sec. 4161.

NOTE.—The interest rate stated in paragraph (1) of the above section is different from the interest rate for city deposits set out in section 11-807.

Approval of Bonds

The bond required of county depositaries under this section, as amended by chapter 89, Laws of 1923, must be approved by the board of county commissioners as an entity, its approval by the chairman of the board being insufficient. *State v. American Bank & Trust Co.*, 75 M 369, 372, 243 P 1093.

Id. In an action on a bond furnished a county under the depositary act which had been returned by the board of county commissioners as not needed and canceled but subsequently without the knowledge of the sureties thereon redelivered to the board, evidence reviewed and held sufficient to justify the conclusion of the court that the bond had not been approved by the board on a certain day as contended by the board.

Id. This section as amended by chapter 89, Laws of 1923, providing that a county depositary bond shall not be effective until approved by the board of county commissioners, in the manner prescribed, is a special statute and controls even though there be a general statute on the subject inconsistent with it.

Id. Where a depositary bond had not been approved, its return amounted to a rejection, and after the sureties had been informed of the action of the board of county commissioners, it was not within the power of the board upon its resubmission by the bank without the knowledge of the sureties to thereafter approve it, a bond being a contract which requires the assent of both parties to the same thing at the same time.

While generally speaking, a depositary bond is not binding until it has been approved by the proper authority, a different rule applies where the bond was voluntarily entered into and the principal enjoyed the benefits which it was intended to secure and a breach occurred; in such case the sureties are estopped from availing themselves of such a defense, if they acted with knowledge of their rights, were aware of the facts and the county (depositor) was misled by their acts and changed its position in reliance thereon, was justified in so doing and was prejudiced or the sureties were benefited. *State*

v. Corvallis State Bank et al., 84 M 297, 300, 275 P 265.

Id. Under the last above rule, held, that where sureties on a bond of a bank which had been designated as a depository of county funds under the depository act (this section) were stockholders and directors of the bank and thus financially interested in the transaction, were sureties on a bond about to expire and, desirous that the bank be continued as a county depository, executed a new bond found sufficient by the county authorities with the exception that they required one additional signature which was secured and the bond delivered to the treasurer, who accepted it and continued his deposits in the bank, the sureties were bound although the bond was not formally approved until five days after the failure of the bank.

Depository Bonds

Where a county treasurer had county funds on deposit in a bank in the sum of thirty-three thousand dollars, without first having exacted an indemnity bond, and the bank later furnished bond in the sum of twenty-five thousand dollars, the legal effect of such latter action was a re-deposit of a sum equal to one-half the amount of the bond, and neither its validity nor sufficiency was impaired by the wrongful act of the treasurer in keeping on deposit a sum in excess of the latter amount. *Yellowstone Co. v. First Trust & Savings Bank*, 46 M 439, 449, 128 P 596.

A depository of public funds is not an officer and a depository bond is not an official bond within the meaning of section 6-315, providing that if there are any defects in the approval or filing thereof, etc., the bond shall not be void so as to discharge the officer or his sureties. *State v. American Bank & Trust Co.*, 75 M 369, 372, 243 P 1093.

A bond given in pursuance to this section, to insure the safety and prompt payment of county funds deposited by the county treasurer (disregarding an unintelligible clause therein), held, a contract for the direct payment of money, warranting the issuance of a writ of attachment against the property of the sureties in an action to recover thereon. *State v. Pondera Valley State Bank et al.*, 77 M 1, 5, 248 P 207.

In the absence of a statute prohibiting it, a state bank may pledge its securities to indemnify a surety who signs a bond in its behalf in order that the bank may obtain deposits of public funds. *Ainsworth v. Kruger*, 80 M 468, 475, 260 P 1055.

Id. A bank director who became surety on a bond given by the bank to secure deposits of public funds was not, by virtue of his office, disqualified from accepting

notes and mortgages from the bank to indemnify him for possible loss because of his engagement as surety, where the bank was believed to be solvent at the time and the transaction was in entire good faith.

Id. Where the directors of a state bank on the second last day of 1922 in passing a resolution under which certain of its securities were pledged to one of their number to indemnify the latter for possible loss on a depository bond, had in contemplation the execution of a like bond for the subsequent year and the director in question in 1923 signed a new bond, and loss occurred to him under the latter bond, he was entitled to hold the securities delivered to him under the first bond to indemnify himself for such loss.

A depository bond executed to take the place of one about to expire and providing that the principal should faithfully account for all moneys "deposited with it," covered moneys on deposit on the date the bond was delivered to the treasurer as well as those subsequently deposited, the law looking to the purpose for which the instrument was required and given to determine the tense of the verb. *State v. Corvallis State Bank et al.*, 84 M 297, 300, 275 P 265.

Held, that a depository bond furnished to a county treasurer under this section and approved by the board of county commissioners providing for "conventional" subrogation, i. e., that in case of the bank's failure and before the county was paid in full, the surety should be entitled to share with the county in dividends paid by the receiver, was invalid as contrary to public policy, in that it had a tendency adversely to affect the public welfare and impair the public revenue. *American Surety Co. of N. Y. v. Clarke*, 94 M 1, 9, 20 P 2d 831.

Liability of City Treasurer

This section requires the city treasurer to deposit public funds in banks designated by the council, he taking such securities as the council may prescribe, approve and deem fully sufficient to insure the safety of the funds, and when deposits are made as prescribed by the act the treasurer shall not be liable for losses except when due to his neglect or fraud. Defendant city treasurer had on deposit in a bank, designated by the council as a city depository, at the time of its closing some \$23,000 in excess of securities approved by the council; the council had not designated the amount of the securities which the treasurer should require from the bank nor taken any action as to the amount which should be deposited therein. Held, in an action by the city to recover on the official bond of the treasurer the amount lost by the failure of the bank,

that under the act above it was the duty of the council to see that securities fully sufficient to protect the deposits were furnished; that under the facts the treasurer could not be held guilty of neglect of duty in making deposits in excess of the securities approved by the council, and therefore was not liable on his official bond for the loss sustained. (Mr. Justice Angstman dissenting.) *Billings v. Massachusetts B. & I. Co.*, 88 M 91, 94, 290 P 246.

Liability of County for Other Funds

Held, that the contention that the legislature by the enactment of chapter 128, Laws of 1923 (75-3939 et seq.), authorizing school districts to issue warrants in a stated amount where the banks in which their funds had been deposited became insolvent—an emergency measure—modified or repealed this section, so as to relieve the county of its liability under that section for funds deposited with its treasurer by school districts and by him deposited in county depositories, has no merit. *State v. McGraw*, 74 M 152, 157 et seq., 240 P 812.

Id. Under chapter 137, Laws of 1925, amendatory of this section, title to moneys deposited by a school district with the county treasurer passes to the county; the moneys become county funds; the county becomes the debtor of the school district and upon redeposit thereof in county depositories is liable to the district for their loss occasioned by such depositories becoming insolvent, such loss being the loss of county and not school district funds.

Held, under *State ex rel. School District v. McGraw*, ante, that a county is liable to an irrigation district for the loss of funds deposited by the latter with the treasurer of the former as required by this section, and redeposited by the treasurer in county depositories which failed. *State v. McGraw*, 74 M 164, 240 P 187.

Liability of County Treasurer

The fact that neither the county commissioners nor the state examiner, whose duty it was to ascertain the depositaries of county funds and inquire into the sufficiency of the bonds held to secure them, interposed any objection to a county treasurer's wrongful conduct in depositing county funds in a bank without exacting any security, did not constitute an estoppel on the part of the county to claim that his act was wrongful. *Yellowstone Co. v. First Trust & Savings Bank*, 46 M 439, 451, 128 P 596.

Id. A county, not having authority to empower its treasurer to make a general deposit of its funds without requiring security as provided by statute, cannot ratify the treasurer's wrongful act in doing

so, and therefore is not estopped to assert that such act was wrongful because of its presumed ratification thereof.

By the adoption of chapter 88, Laws of 1913 (this section) and amendment thereof (chapter 137, Laws of 1925), requiring the county treasurer to deposit all "public moneys"—which term includes moneys belonging to a school district or other branch of the state government—in his possession in county depositories designated by the board of county commissioners, the treasurer becomes the agent of the county in handling such funds and he and his bondsmen are relieved from liability for their loss occasioned through the failure of the depositories. *State v. McGraw*, 74 M 152, 157 et seq., 240 P 812.

Under this section, as amended by chapter 89, Laws of 1923, a county treasurer may not lawfully deposit public funds, nor permit them to remain, in a bank unless such bank has been designated by the board of county commissioners, after approval by it of an indemnity bond or other prescribed security, as a proper depository; disregard of such requirement is a violation of official duty and, in case of loss, subjects the treasurer to liability upon his official bond. *State v. Rosman et al.*, 84 M 207, 213, 274 P 850.

Since the enactment of chapter 89, Laws of 1923, where the county treasurer deposits county funds in a bank designated by the board of county commissioners as a county depository, first requiring proper security, he is no longer custodian of such funds, and liable in case of loss only if occasioned by his own neglect, fraud or dishonorable conduct. *Rosebud County v. Smith et al.*, 92 M 75, 81, 9 P 2d 1071.

The provisions of this section, relating to depository bonds which the county treasurer must furnish and the board of county commissioners approve to insure the safety and prompt payment of deposits made, became as much a part of a surety bond at the time it was executed and delivered as if written into the contract. *American Surety Co. of N. Y. v. Clarke*, 94 M 1, 9, 20 P 2d 831.

Personal Bond

Where a personal bond is given to secure county deposits "in addition to" other bonds furnished by surety companies, the liability of the sureties on the former is not postponed until the corporation bonds have been exhausted. *State v. Pondera Valley State Bank et al.*, 77 M 1, 5, 248 P 207.

Preferred Claims Against Insolvent Banks

Where a county treasurer has county funds on deposit in a bank, in compliance with this section, the moneys so deposited

constitute a general deposit and make of the county a general creditor of the bank. In case of the bank's failure, it must, under these circumstances, either share alike with other general creditors in the distribution of the bank's assets, or look to the surety for relief. *Yellowstone Co. v. First Trust & Savings Bank*, 46 M 439, 449, 128 P 596.

Id. That a county treasurer was following a custom established by his predecessor in depositing public moneys in bank, without requiring the security prescribed by statute, was no defense to a suit by the county to have the bank declared a trustee ex maleficio of such moneys for its benefit, and to be decreed entitled to preference in the distribution of the assets of the bank then in the hands of a receiver.

Id. The keeping of county funds on deposit to the extent of \$20,500, excess over and above the sum of \$12,500 secured by bond, as required by this section, was unlawful and without the county's consent, and as to such excess, the bank, chargeable with knowledge of the unlawful conduct of the county treasurer, and therefore an active participant in the wrong, became a trustee ex maleficio, for the use and benefit of the county.

In an action by sureties to establish a preference upon the assets of an insolvent bank to satisfy the amount which they were required to pay a county for funds on deposit therein at the time of its suspension, held that in the absence of constitutional or statutory provision conferring the right of sovereignty upon counties they do not possess it; that therefore the county could not assert the right of preference with respect to county funds lawfully on deposit in the bank which the state enjoys in its sovereign capacity, and hence that the sureties were not entitled to claim that they were subrogated to such right of preference. *Bignell et al. v. Cummins*, 69 M 294, 304, 222 P 797. See *City of Missoula v. Dick et al.*, as to preference right of a citizen, 76 M 506, 248 P 193.

Before it may be said that a bank which accepts deposits of public funds made illegally by their custodian and thereafter becomes insolvent is a trustee ex maleficio of such funds for the public body to which they belong, it must be made to appear that the bank had notice or knowledge of the illegality of the deposits. *State ex rel. Rankin v. Benton State Bank*, 81 M 322, 325, 263 P 689.

Id. Where a bank under the depository law had qualified to receive county funds to the amount of \$325,000 but had received deposits only to the amount of \$251,538 without knowledge or notice that the county treasurer in depositing that amount with it had done so in disregard

of this section, which required him to prorate the funds among all the banks in the county which had qualified as depositories, the county, upon subsequent insolvency of the bank, was not entitled to an order declaring it a preferred creditor to the amount of the excess between the sum which the treasurer should have deposited under a proper prorating and the sum actually deposited, on the theory that it was a trustee ex maleficio of the excess deposits; not having been an active participant in the wrongdoing of the treasurer and having received the deposits without knowledge or notice that he was transgressing the law, its status as a general depository was not changed to that of a trustee.

Held, under this section, as amended by chapter 89, Laws of 1923, making it the duty of the county treasurer to deposit public funds only in such banks as may be designated by the board of county commissioners, upon receipt by him of such securities from them as may be prescribed and approved by the board as sufficient to safeguard the deposits, the treasurer is absolved from responsibility in the selection of the depository; the deposits when commingled with other moneys of the bank become general deposits and in case of the bank's subsequent insolvency and the insufficiency of the securities to save the county harmless, the county may not claim a preference payment out of its assets to the extent of the deficit, but may take only as a general creditor. *County of Missoula et al. v. Lochrie*, 83 M 308, 312, 271 P 710.

County depository bank, receiving deposits exceeding amount of its bond contrary to county commissioners' direction, violated law (this section). County treasurer's deposit in depository bank held traceable into cash in receiver's hands; presumption being that money disbursed therefrom was other money. *First Nat. Bank of Forsyth, Mont. v. Fidelity & Deposit Co.*, 48 F 2d 585.

Prorating Between Depositories

The county treasurer who collects taxes for a city and which constitute city and not county funds, is without authority to prorate such funds among banks designated by the board of county commissioners as depositories for county moneys. *State v. McNamer*, 62 M 490, 495 et seq., 205 P 951.

Where a board of county commissioners, acting under chapter 88, Laws of 1913 (this section before amendment), had designated a bank a county depository, the county treasurer was, in the absence of the statute requiring a periodical designation thereafter, justified in continuing to make deposits therein upon receipt of ap-

proved securities, until notified to the contrary. *State ex rel. Rankin v. Madison State Bk.*, 77 M 498, 501, 251 P 548.

Id. Held, that this section before amendment, not having prescribed that the board of county commissioners in designating a bank as county depository should cause its action to be recorded in its minutes, the board, under the rule that where the mode of the exercise of a power granted to it is not prescribed it may use its own discretion in selecting the mode, could properly choose any method of making known to the treasurer the bank entitled to receive county deposits it deemed adapted for that purpose.

Id. Under the above rules, held that where a board of county commissioners made an order pursuant to the provisions of this section, designating a certain bank a county depository, but failed to cause such order to be entered in its minutes, the board was properly permitted, on a taxpayer's petition to require the receiver of the bank upon its insolvency to recognize the claim of the county as a preferred one on the ground that the deposits therein had been unlawfully made in that the board's order designating the bank a

depository had not been entered in its minutes, to prove its action in that regard by oral testimony; that the funds were legally deposited and that therefore the county was a general creditor and not entitled to a preference.

References

State ex rel. Case v. Bolles et al., 74 M 54, 238 P 586; *City of Missoula v. Dick et al.*, 76 M 502, 507, 248 P 193; *Ainsworth v. Kruger*, 80 M 468, 475, 260 P 1038; *City of Parsons v. Fidelity & Deposit Co.*, 29 F 2d 417, 422.

Collateral References

Depositories⁶ et seq.
26 C.J.S. Depositories § 8 et seq.
42 Am. Jur. 724, Public Funds, §§ 11 et seq.

Liability of public officer or his bond for loss of public funds due to insolvency of bank in which they were deposited. 93 ALR 819.

Liability of sureties on official bonds for profits realized by principal from use or investment of public funds. 104 ALR 1402.

16-2619. (4767.1) Cashier's checks of federal reserve banks as security for deposit of public funds. From and after the passage and approval of this act, it shall be lawful for county, city or town officials charged by law with the duty of requiring security from depositories of their several public funds, to accept from such depository bank as security for such deposits, or any part thereof, cashier's checks issued to such depository bank by any federal reserve bank.

History: En. Sec. 1, Ch. 106, L. 1935.

Collateral References

Depositories⁷.
26 C.J.S. Depositories § 9.

16-2620. (4767.2) Supplementary nature of act. This act shall be deemed to be supplementary to the provisions of section 16-2618, and shall not in any manner limit or affect the right of the several officers enumerated in said section to accept security of the character specified therein.

History: En. Sec. 2, Ch. 106, L. 1935.

16-2621. (4767.3) State examiner to sign trustee and deposit receipts. The state examiner of the state of Montana is hereby designated and empowered to sign all trustee and deposit receipts and releases required to be signed for and on behalf of the state of Montana in all cases where negotiable securities are placed in trust with a trustee or trustees in lieu of the actual securities, for security of county, city, and town deposits, under the laws of the state of Montana relating to the deposit of county, city, and town funds.

History: En. Sec. 1, Ch. 44, L. 1931.

16-2622. (4768) County commissioners may suspend treasurer. Whenever any action based upon official misconduct is commenced against any

county treasurer, the board of county commissioners may, in its discretion, suspend him from office until such suit is determined, and may appoint some person to fill the vacancy.

History: En. Sec. 4368, Pol. C. 1895; re-en. Sec. 3004, Rev. C. 1907; re-en. Sec. 4768, R. C. M. 1921. Cal. Pol. C. Sec. 4162.

Collateral References

Counties⇒67.
20 C.J.S. Counties § 108.

References

Gullickson v. Mitchell, 113 M 359, 366, 126 P 2d 1106.

16-2623. (4769) No commissions allowed. In case of the death of any county treasurer, his legal representatives must deliver up all official moneys, books, accounts, papers, and documents which come into their possession. No percentage must be allowed to the treasurer on any money by him received from his predecessor in office, or from the legal representative of such predecessor.

History: En. Sec. 4369, Pol. C. 1895; re-en. Sec. 3005, Rev. C. 1907; re-en. Sec. 4769, R. C. M. 1921. Cal. Pol. C. Sec. 4163.

16-2624. (4770) Books and vouchers subject to inspection. The books, accounts, and vouchers of the treasurer are at all times subject to the inspection and examination of the board of county commissioners and grand jury.

History: En. Sec. 4370, Pol. C. 1895; re-en. Sec. 3006, Rev. C. 1907; re-en. Sec. 4770, R. C. M. 1921. Cal. Pol. C. Sec. 4164.

Collateral References

Counties⇒48.
20 C.J.S. Counties § 85.

16-2625. (4771) Must permit state examiner and county clerk to examine books. The treasurer must permit the state examiner and county clerk or the board of county commissioners to examine his books and count the money in the treasury, whenever any of them may wish to make an examination or counting.

It shall be the duty of the county clerk and recorder at the close of business each month to count the cash in the office of the county treasurer and to certify the same in detail to the state examiner, retaining a copy of such certification in his office.

History: En. Sec. 4371, Pol. C. 1895; re-en. Sec. 3007, Rev. C. 1907; re-en. Sec. 4771, R. C. M. 1921; amd. Sec. 1, Ch. 124, L. 1935. Cal. Pol. C. Sec. 4165.

Collateral References

Counties⇒154½, 159.
20 C.J.S. Counties §§ 229, 232.

16-2626. (4772) His duty as collector of taxes. His duties as collector of taxes are prescribed in title 84 of this code.

History: En. Sec. 4372, Pol. C. 1895; re-en. Sec. 3008, Rev. C. 1907; re-en. Sec. 4772, R. C. M. 1921.

Collateral References

Taxation⇒550.
84 C.J.S. Taxation § 657.

Cross-References

Collection of taxes, sec. 84-4101 et seq.
Special improvement districts, collector of taxes, sec. 11-2233.

Mandamus to compel collection of taxes.
58 ALR 117.

CHAPTER 27

SHERIFF

- Section 16-2701. "Process" and "notice" defined.
 16-2702. Duties of sheriff.
 16-2703. Under-sheriff to be appointed.
 16-2704. Duties of under-sheriff.
 16-2705. Action may be prosecuted against executors.
 16-2706. Return by mail to another county.
 16-2707. Return prima facie evidence.
 16-2708. Penalty for nonreturn of process.
 16-2709. Liability for refusing to levy or sell.
 16-2710. Damages for refusing to pay over money.
 16-2711. Liability for permitting an escape.
 16-2712. Liability for a rescue.
 16-2713. No action for escape or rescue after return or recapture.
 16-2714. Direction to sheriff must be in writing.
 16-2715. When office of sheriff deemed vacant.
 16-2716. When sheriff justified in executing process.
 16-2717. Officer to exhibit process.
 16-2718. Sheriff to act as crier.
 16-2719. Service on sheriff, how made.
 16-2720. Coroner to execute process when sheriff is a party.
 16-2721. Elisors to act in cases designated.
 16-2722. Other duties of sheriff.
 16-2723. Mileage and expense of sheriff.

16-2701. (4773) "Process" and "notice" defined. "Process," as used in this chapter, includes all writs, warrants, summons, and orders of courts of justice or judicial officers. "Notice" includes all papers and orders (except process) required to be served in any proceeding before any court, board, or officer, or when required by law to be served independently of such proceeding.

History: En. Sec. 4380, Pol. C. 1895; re-en. Sec. 3009, Rev. C. 1907; re-en. Sec. 4773, R. C. M. 1921. Cal. Pol. C. Sec. 4175.

thereof. State ex rel. Clark v. District Court, 103 M 145, 147, 61 P 2d 836.

References

State ex rel. Brooks v. Cook, 84 M 478, 487, 276 P 958.

Collateral References

Sheriffs and Constables 87.
 80 C.J.S. Sheriffs and Constables § 44.

Writ of Supreme Court is Process

The decision of the supreme court, i. e., its opinion, on application for a writ under its original jurisdiction, constitutes the judgment of the court and the writ itself which is thereafter issued is merely the court process issued for the enforcement

16-2702. (4774) Duties of sheriff. The sheriff must:

1. Preserve the peace;
2. Arrest and take before the nearest magistrate, for examination, all persons who attempt to commit or have committed a public offense;
3. Prevent and suppress all affrays, breaches of the peace, riots, and insurrections which may come to his knowledge;
4. Perform duties of humane officer within his county with reference to the protection of dumb animals;
5. Attend all courts, except justices and police courts, at their respective terms or sessions held within his county, and obey their lawful orders and directions;
6. Command the aid of as many male inhabitants of his county as he may think necessary in the execution of these duties;
7. Take charge of and keep the county jail and the prisoners therein;

8. Indorse upon all notices and process the year, month, day, hour, and minute of reception, and issue therefor to the person delivering it, on payment of fees, a certificate showing the names of the parties, title of paper, and time of reception;

9. Serve all process or notices in the manner prescribed by law;

10. Certify under his hand upon the process of notices the manner and time of service, or, if he fails to make service, the reasons of his failure, and return the same without delay.

History: En. Sec. 4381, Pol. C. 1895; re-en. Sec. 3010, Rev. C. 1907; re-en. Sec. 4774, R. C. M. 1921; amd. Sec. 1, Ch. 157, L. 1925. Cal. Pol. C. Sec. 4176.

Cross-References

Deputies, secs. 16-3701, 16-3705.

Failure to pay over fines, penalty, sec. 94-1504.

Failure to receive person arrested, penalty, sec. 94-3915.

Fees, sec. 25-226.

Importation of non-resident deputies forbidden, sec. 94-3920.

Not to practice law, secs. 93-902, 93-2119.

Presenting false accounts, penalty, sec. 94-1517.

Refusal to aid in arrest, penalty, sec. 94-35-177.

Return of execution, sec. 93-5804.

Salary, sec. 25-606.

Selling property without notice, penalty, sec. 93-8525.

Liability of Sheriff

This section is merely declaratory of the common law and the sheriff is not liable in damages for damage caused by mob violence. *Annala v. McLeod*, 122 M 498, 206 P 2d 811, 815.

Operation and Effect

Where a sheriff had employed a number of men, sworn in as deputy sheriffs, to guard railroad strikers, after having assured the company that he was able to enforce the peace without such aid, and the company had agreed to pay for such services, the company was liable for such payment, notwithstanding the statutory provision empowering the sheriff to call to his aid such persons as may be necessary to suppress unlawful assemblies, and the provision prohibiting a sheriff from demanding for official services any greater fees than are allowed by law. *Sullivan v. U. & N. Ry. Co.*, 11 M 236, 243, 28 P 807.

Whether it was necessary for the sheriff to assemble his deputies, the policemen, and the employees of the defendant as a posse comitatus we need not inquire. Presumably the sheriff was acting within his authority; and he was the one to judge whether he needed help to preserve the

peace. It was his duty to prevent and suppress breaches of the peace, riots and insurrections, and to command the aid of as many male inhabitants of his county as he thought necessary to execute that duty. Upon such an occasion the sheriff is the commander of all he summons to his aid and all under his command are in duty bound to obey his lawful orders. *McCarthy v. Anaconda Copper Min. Co.*, 70 M 309, 313, 225 P 391.

A sheriff is without authority, as such, beyond the confines of the state; the ordinary discharge of his duties does not authorize him to leave the state except where he is designated the agent of the state in cases of extradition. *Brannin v. Sweet Grass Co.*, 88 M 412, 416, 293 P 970.

References

Cited and applied as section 4381, Political Code, in *Sears v. Gallatin County*, 20 M 462, 464, 52 P 204; as section 3010, Revised Codes, in *State ex rel. Hillis v. Sullivan*, 48 M 320, 324, 137 P 392; *State v. Driscoll*, 49 M 558, 565, 144 P 153; *Majors v. County of Lewis and Clark*, 60 M 608, 615, 201 P 268; *State ex rel. Breazley v. District Court*, 75 M 116, 120, 241 P 1075; *Plummer v. Northern Pac. Ry. Co.*, 79 M 82, 89, 255 P 18; *Cline v. Tait*, 113 M 475, 484, 129 P 2d 89.

Collateral References

Sheriffs and Constables—86 et seq.

80 C.J.S. Sheriffs and Constables § 42.

47 Am. Jur. 839, Sheriffs, Police, and Constables, §§ 26-95.

Liability for death of or injury to prisoners. 46 ALR 94.

Personal liability of peace officer or his bond for negligence causing damage to property. 53 ALR 41.

Liability for damage to person or goods during execution of eviction process. 56 ALR 1038.

Liability of sheriff or other officer executing process of execution or attachment for failure to seize sufficient property. 93 ALR 316.

Mistreatment of prisoner as ground for removal of sheriff. 100 ALR 1401.

Duty of sheriff as to care of property levied upon by him. 138 ALR 710.

16-2703. (4775) Under-sheriff to be appointed. The sheriff, as soon as may be after he enters upon the duties of his office, must, except in counties of the seventh and eighth classes, appoint some person under-sheriff to hold during the pleasure of the sheriff. Such under-sheriff has the same powers and duties as a deputy sheriff.

History: En. Sec. 851, 5th Div. Comp. Stat. 1887; amd. Sec. 4382, Pol. C. 1895; re-en. Sec. 3011, Rev. C. 1907; re-en. Sec. 4775, R. C. M. 1921; amd. Sec. 1, Ch. 24, L. 1933.

References

Cited or applied as section 4382, Political Code, in *Jobb v. County of Meagher*, 20 M 424, 429, 51 P 1034.

Collateral References

Sheriffs and Constables 15.
80 C.J. S. Sheriffs and Constables §§ 2, 22.
47 Am. Jur. 929, Sheriffs, Police and Constables, §§ 154 et seq.

Liability of public officer or his bond for the defaults and misfeasances of his clerks, assistants, or deputies. 1 ALR 222.
Compensation of additional deputies. 26 ALR 1309.

16-2704. (4776) Duties of under-sheriff. Whenever a vacancy occurs in the office of sheriff, the under-sheriff must in all things execute the office of sheriff until a sheriff is elected or appointed and duly qualified. Any default, misfeasance, or malfeasance of such under-sheriff in the meantime, as well as before, is a breach of the condition of the bond given by the sheriff who appointed him, and also a breach of the conditions of the bond given by him to the sheriff.

History: En. Sec. 4383, Pol. C. 1895; re-en. Sec. 3012, Rev. C. 1907; re-en. Sec. 4776, R. C. M. 1921.

Collateral References

Sheriffs and Constables 79.
80 C.J.S. Sheriffs and Constables § 37.

16-2705. (4777) Action may be prosecuted against executors. Any action for default or misconduct of any sheriff, his under-sheriff, jailer, or any of his deputies, may be prosecuted against the executors or administrators of such sheriff.

History: En. Sec. 4384, Pol. C. 1895; re-en. Sec. 3013, Rev. C. 1907; re-en. Sec. 4777, R. C. M. 1921.

Collateral References

Abatement and Revival 73.
1 C.J.S. Abatement and Revival § 175.

16-2706. (4778) Return by mail to another county. When process or notices are returnable to another county, the sheriff may inclose such process or notice in an envelope, addressed to the officer who sent them, and deposit it in the postoffice, prepaying postage.

History: En. Sec. 4385, Pol. C. 1895; re-en. Sec. 3014, Rev. C. 1907; re-en. Sec. 4778, R. C. M. 1921. Cal. Pol. C. Sec. 4177.

Collateral References

Sheriffs and Constables 87.
80 C.J.S. Sheriffs and Constables § 44.

16-2707. (4779) Return prima facie evidence. The return of the sheriff, upon process or notices, is prima facie evidence of the facts in such return stated.

History: En. Sec. 4386, Pol. C. 1895; re-en. Sec. 3015, Rev. C. 1907; re-en. Sec. 4779, R. C. M. 1921. Cal. Pol. C. Sec. 4178.

Cross-Reference

Proof of service of summons, sec. 93-1318.

Operation and Effect

The return of an officer upon a search-

warrant is prima facie evidence only of the facts stated therein and may, therefore, be overcome by other evidence. *State ex rel. Merrell v. District Court*, 72 M 77, 231 P 1107.

The return of a sheriff on execution sale is only prima facie evidence of the facts stated therein; it may be contradicted by other evidence, especially where the return is at variance with the officer's

certificate of sale, by virtue of which latter instrument title to the property passes, subject to redemption; nor can the title of a purchaser at an execution sale be affected by defects or informalities in the return. *Commercial Bank & Trust Co. v. Jordan*, 85 M 375, 386, 278 P 832.

A sheriff's return on execution is merely prima facie evidence of the facts therein stated—it may be overcome by other evidence; hence, where his return in an action for the rescission of a land contract recited that he had delivered certain ar-

ticles of personal property as directed, evidence regarding loss of or damage thereto was properly admissible. *Silfvast v. Asplund et al.*, 99 M 152, 158, 42 P 2d 452.

References

Rothrock v. Bauman et al., 73 M 401, 406, 236 P 1077.

Collateral References

Process⇒141.

72 C.J.S. Process § 100.

16-2708. (4780) Penalty for nonreturn of process. If the sheriff does not return a notice or process in his possession with the necessary indorsement thereon without delay, he is liable to the party aggrieved for the sum of two hundred dollars and for all damages sustained by him.

History: En. Sec. 4387, Pol. C. 1895; re-en. Sec. 3016, Rev. C. 1907; re-en. Sec. 4780, R. C. M. 1921. Cal. Pol. C. Sec. 4179.

Cross-Reference

Refusal to serve process, penalty, sec. 93-1316.

Collateral References

Sheriffs and Constables⇒123.

16-2709. (4781) Liability for refusing to levy or sell. If the sheriff to whom a writ of execution or attachment is delivered neglects or refuses, after being required by the creditor or his attorney, to levy upon or sell any property of the party charged in the writ which is liable to be levied upon or sold, he is liable to the creditor for the value of such property.

History: En. Sec. 4388, Pol. C. 1895; re-en. Sec. 3017, Rev. C. 1907; re-en. Sec. 4781, R. C. M. 1921. Cal. Pol. C. Sec. 4180.

Operation and Effect

Where a sheriff wrongfully refuses to levy upon and sell property on execution issued on a money judgment, he is liable in damages to the judgment creditor on his official bond, and therefore the latter has a plain, speedy and adequate remedy and is not entitled to a writ of mandate to compel the officer to proceed under the execution. *State ex rel. Duggan v. District Court*, 65 M 197, 200, 210 P 1062. Id. Where a judgment creditor is entitled to the possession of specific property and the sheriff refuses to proceed under execution, the remedy of an action for damages on the officer's bond is not adequate, and mandamus lies to compel action.

Complaint in an action against a sheriff and his official bondsman for damages flowing from the refusal of the officer to

levy a writ of attachment, alleging that the judgment in the attachment suit and all of the rights of the judgment creditor against the defendants had been assigned to plaintiff and that plaintiff is the assignee of all of the rights of the said judgment creditor against them, held sufficient to show an assignment of the cause of action in the absence of a special demurrer or motion to make more definite and certain. *Gotzian & Co. v. Morris et al.*, 89 M 307, 311, 297 P 489.

References

State ex rel. Grantier v. Woods, 67 M 337, 339, 215 P 671; *Weir v. Hum Tong*, 100 M 1, 7, 46 P 2d 45.

Collateral References

Sheriffs and Constables⇒106, 120½.

80 C.J.S. Sheriffs and Constables §§ 57, 88 et seq.

47 Am. Jur., Sheriffs, Police, and Constables, p. 856, § 47; p. 881, § 83.

16-2710. (4782) Damages for refusing to pay over money. If he neglects or refuses to pay over, on demand, to the person entitled thereto, any money which may come into his hands by virtue of his office (after de-

ducting his legal fees), the amount thereof, with twenty-five per cent damages and interest at the rate of ten per cent per month from the time of demand, may be recovered by such person.

History: En. Sec. 4389, Pol. C. 1895; re-en. Sec. 3018, Rev. C. 1907; re-en. Sec. 4782, R. C. M. 1921. Cal. Pol. C. Sec. 4181.

Operation and Effect

Since under this section a means is provided for compelling a sheriff to pay moneys which may have come into his hands by virtue of his office, to the person entitled thereto, mandamus does not lie to compel him to do so. State ex rel. Grantier v. Woods, 67 M 337, 339, 215 P 671.

An officer who comes into possession of funds by virtue of his office and deposits the same, exercising good faith and due care in the selection of the depository, is not liable on his official bond for their loss resulting from the failure of the bank. Wells-Dickey Co. v. Benjamin, 74 M 170, 175, 239 P 771.

Id. Held, that this section providing

that if a sheriff refuses to pay over money which came into his hands by virtue of his office, the person entitled thereto may recover it with twenty-five per cent damages, has application only to cases of intentional delinquency, merely prescribes punishment for wilful or corrupt neglect of duty, and is therefore inapplicable to a case where his failure to pay was due to the closing of a bank in which the money was deposited.

References

Cited or applied as section 4389, Political Code, in Oppenheimer v. Regan, 32 M 110, 79 P 695.

Collateral References

Sheriffs and Constables⇒122.

80 C.J.S. Sheriffs and Constables § 95.

47 Am. Jur. Sheriffs, Police and Constables, p. 871, §§ 67 et seq.; p. 906, § 122.

16-2711. (4783) Liability for permitting an escape. A sheriff who suffers the escape of a person arrested in a civil action, without the consent or connivance of the party in whose behalf the arrest or imprisonment was made, is liable as follows:

1. When the arrest is upon an order to hold to bail or upon a surrender in exoneration of bail before judgment, he is liable to the plaintiff as bail;

2. When the arrest is on an execution or commitment to enforce the payment of money, he is liable for the amount expressed in the execution or commitment;

3. When the arrest is on an execution or commitment other than to enforce the payment of money, he is liable for the actual damages sustained;

4. Upon being sued for damages for an escape or rescue, he may introduce evidence in mitigation or exculpation.

History: En. Sec. 4390, Pol. C. 1895; re-en. Sec. 3019, Rev. C. 1907; re-en. Sec. 4783, R. C. M. 1921. Cal. Pol. C. Sec. 4182.

80 C.J.S. Sheriffs and Constables § 118.

47 Am. Jur. 885, Sheriffs, Police and Constables, § 95.

Collateral References

Sheriffs and Constables⇒104.

16-2712. (4784) Liability for a rescue. He is liable for a rescue of a person arrested in a civil action, equally as for an escape.

History: En. Sec. 4391, Pol. C. 1895; re-en. Sec. 3020, Rev. C. 1907; re-en. Sec. 4784, R. C. M. 1921. Cal. Pol. C. Sec. 4183.

16-2713. (4785) No action for escape or rescue after return or recapture. An action cannot be maintained against a sheriff for a rescue, or for an escape of a person arrested upon an execution or commitment, if, after

his rescue or escape and before the commencement of the action, the prisoner returns to the jail, or is retaken by the sheriff.

History: En. Sec. 4392, Pol. C. 1895; re-en. Sec. 3021, Rev. C. 1907; re-en. Sec. 4785, R. C. M. 1921. Cal. Pol. C. Sec. 4184.

16-2714. (4786) Direction to sheriff must be in writing. No direction or authority by a party or his attorney to a sheriff, in respect to the execution of process or return thereof, or any act or omission relating thereto, is available to discharge or excuse the sheriff from a liability for neglect or misconduct, unless it is contained in a writing signed by the attorney of the party or by the party.

History: En. Sec. 4393, Pol. C. 1895; re-en. Sec. 3022, Rev. C. 1907; re-en. Sec. 4786, R. C. M. 1921. Cal. Pol. C. Sec. 4185.

Collateral References

Sheriffs and Constables 101.
80 C.J.S. Sheriffs and Constables § 56.

16-2715. (4787) When office of sheriff deemed vacant. When the sheriff is committed under an execution or commitment for not paying over money received by him by virtue of his office, and remains committed for sixty days, his office is vacant.

History: En. Sec. 4394, Pol. C. 1895; re-en. Sec. 3023, Rev. C. 1907; re-en. Sec. 4787, R. C. M. 1921. Cal. Pol. C. Sec. 4186.

Collateral References

Sheriffs and Constables 5.
80 C.J.S. Sheriffs and Constables § 8 et seq.

16-2716. (4788) When sheriff justified in executing process. A sheriff, or other ministerial officer, is justified in the execution of and must execute all process and orders regular on their face and issued by competent authority, whatever may be the defect in the proceedings upon which they were issued.

History: En. Sec. 4395, Pol. C. 1895; re-en. Sec. 3024, Rev. C. 1907; re-en. Sec. 4788, R. C. M. 1921. Cal. Pol. C. Sec. 4187.

Harri v. Isaac, 111 M 152, 156, 107 P 2d 137.

Operation and Effect

In an action against a sheriff for the value of personal property sold under execution issued against the property of a third person, the officer cannot justify under the execution, without proving the existence of a valid judgment. *Ford v. McMaster*, 6 M 240, 241, 11 P 669; *Marcum v. Coleman*, 8 M 196, 200, 19 P 394; *Palmer v. McMaster*, 10 M 390, 394, 25 P 1056.

References

Folsom v. Fisco et al., 62 M 194, 197, 204 P 367.

Collateral References

Sheriffs and Constables 87.
80 C.J.S. Sheriffs and Constables § 44.

16-2717. (4789) Officer to exhibit process. The officer executing such process must then, and at all times subsequent, so long as he retains it, upon request show the same, with all papers attached, to any person interested therein.

History: En. Sec. 4396, Pol. C. 1895; re-en. Sec. 3025, Rev. C. 1907; re-en. Sec. 4789, R. C. M. 1921. Cal. Pol. C. Sec. 4188.

Collateral References
Process 64.
72 C.J.S. Process § 34.

16-2718. (4790) Sheriff to act as crier. The sheriff in attendance upon court must act as the crier thereof, call the parties and witnesses and all other persons bound to appear before the court, and make proclamation of the opening and adjournment of the court, and of any other matter under its direction.

History: En. Sec. 4397, Pol. C. 1895; re-en. Sec. 3026, Rev. C. 1907; re-en. Sec. 4790, R. C. M. 1921. Cal. Pol. C. Sec. 4189.

ex rel. Hillis v. Sullivan, 48 M 320, 324, 137 P 392.

References

Cited and construed as section 3026, Revised Codes, with other sections, in State

Collateral References

Sheriffs and Constables 95.
80 C.J.S. Sheriffs and Constables § 49.

16-2719. (4791) Service on sheriff, how made. Service of a paper, other than a process, upon the sheriff may be made by delivering it to him or to one of his deputies, or to a person in charge of the office during office hours, or if no such person is there, by leaving it in a conspicuous place in the office.

History: En. Sec. 4398, Pol. C. 1895; re-en. Sec. 3027, Rev. C. 1907; re-en. Sec. 4791, R. C. M. 1921. Cal. Pol. C. Sec. 4190.

Collateral References
Notice 10.
66 C.J.S. Notice § 18.

16-2720. (4792) Coroner to execute process when sheriff is a party. When the sheriff is a party to an action or proceeding, the process and orders therein, which it would otherwise be the duty of the sheriff to execute, must be executed by the coroner of the county.

History: En. Sec. 4399, Pol. C. 1895; re-en. Sec. 3028, Rev. C. 1907; re-en. Sec. 4792, R. C. M. 1921. Cal. Pol. C. Sec. 4191.

80 C.J.S. Sheriffs and Constables § 38.
47 Am. Jur. 844, Sheriffs, Police and Constables, § 33.

Collateral References

Sheriffs and Constables 80.

16-2721. (4793) Elisors to act in cases designated. Process or orders in an action or proceeding may be executed by a person residing in the county, designated by the court or a judge thereof, and denominated an elisor, in the following cases:

1. When the sheriff and coroner are both parties;
2. When either of these officers is a party and the process is against the other; and
3. When either of these officers is a party and there is a vacancy in the office of the other; or, when it appears by affidavit to the satisfaction of the court in which the proceeding is pending, or the judge thereof, that both of these officers are disqualified, or by reason of any bias, prejudice, or other cause would not act promptly or impartially. When process is delivered to an elisor, he must execute and return it in the same manner as the sheriff is required to execute similar process. The court or judge may at any time on its own motion appoint an elisor.

History: En. Sec. 4400, Pol. C. 1895; re-en. Sec. 3029, Rev. C. 1907; re-en. Sec. 4793, R. C. M. 1921. Cal. Pol. C. Sec. 4192.

16-2722. (4794) Other duties of sheriff. The sheriff must perform such other duties as are required of him by law.

History: En. Sec. 4401, Pol. C. 1895; re-en. Sec. 3030, Rev. C. 1907; re-en. Sec. 4794, R. C. M. 1921. Cal. Pol. C. Sec. 4193.

Collateral References

Sheriffs and Constables 77.
80 C.J.S. Sheriffs and Constables § 35.

References

Brannin v. Sweet Grass Co., 88 M 412,
416, 293 P 970.

16-2723. (4885) Mileage and expense of sheriff. Sheriffs delivering prisoners at the state prison or at the state reform school, or insane persons at the state insane asylum, shall receive actual expenses necessarily incurred in their transportation, which shall include the expenses of the sheriff in going and returning from such institution. They shall take vouchers for every item of expenses incurred by them in such transportation, the amount of which expenses, as shown by the said vouchers when served by said sheriff, shall be audited and allowed by the state board of examiners or by the board of county commissioners, as the case may be, and paid out of the same money and in the same manner as are other expense claims against the state or counties, and no other or further compensation shall be received by sheriffs for such expenses, provided that in determining the actual expense, if travel be by a privately owned vehicle, the mileage rate shall be allowed as herein provided. While in the discharge of his duties, both civil and criminal, the sheriff shall receive nine cents (9¢) per mile for each and every mile actually and necessarily traveled; and for transporting any person by order of court, except as hereinbefore provided, he shall receive nine cents (9¢) additional per mile, the same to be in full for transporting and dieting of such person during such transportation; provided that where more than one person is transported by the sheriff or when one or more papers are served on the same trip made for the transportation of one or more prisoners, but one mileage shall be charged. The county shall not be liable for, nor shall the board of county commissioners pay for any claim of the sheriff or other officer, for team or horse hire, or any other expense incurred in travel or for subsistence, in cases where mileage is allowed under this section; the fees for mileage named in this section being in full for all such traveling expenses in both civil and criminal work.

History: En. Sec. 1, Ch. 86, L. 1905; re-en. Sec. 3137, Rev. C. 1907; re-en. Sec. 4885, R. C. M. 1921; amd. Sec. 3, Ch. 121, L. 1941; amd. Sec. 1, Ch. 59, L. 1949.

Cross-Reference

Compensation for delivering prisoners to state prison, sec. 80-748.

Amendment of Claim to Include Mileage Up to Ten Cents—Where Limitation Statute Not Applicable

Where a sheriff's claims during two terms in office had been approved by the commissioners for mileage at the rate of seven and eight and a half cents per mile, and after retiring from office he presented additional claims for the difference between those rates and ten cents

per mile under this section, he was not required to present the latter claims within a year after the last claim accrued, under section 16-1802, they having amounted to amendments of the original claims the merits of which had been passed upon by the board before approval. Weir v. Silver Bow County, 113 M 237, 241, 124 P 2d 1003.

Operation and Effect

This section was held to be constitutional when applied to officers elected prior to its passage. Scharrenbroich v. Lewis and Clark County, 33 M 250, 256, 260, 83 P 482.

A sheriff, constable, or other peace officer, traveling in the discharge of his duties, is entitled to charge only for each

mile "actually and necessarily" traveled; and a chief of police is guilty of misconduct in office in claiming and collecting mileage fees for services performed by another officer, he paying to the latter his actual traveling expenses and retaining for himself the balance of the total amount received. *State ex rel. Wynne v. Examining and Trial Board*, 43 M 389, 399, 117 P 77.

The term "fees," as used in this section, connotes mileage payable to the sheriff by the county in certain cases. *State v. Story*, 53 M 573, 578, 165 P 748.

The provision in this section that the sheriff "while in the discharge of his duties, both civil and criminal," shall receive ten cents per mile actually and necessarily traveled, held not to mean that he may collect that amount per mile in

the performance of every duty imposed upon him, but rather that, in the performance of duties for which by other provisions of the law he is authorized to charge mileage, it shall be fixed at ten cents per mile. *Brannin v. Sweet Grass Co.*, 88 M 412, 416, 293 P 970.

Collateral References

Sheriffs and Constables ~~40~~ 40, 41.

80 C.J.S. Sheriffs and Constables §§ 230, 232.

47 Am. Jur. 886, Sheriffs, Police and Constables, §§ 96 et seq.

Constitutional inhibition of change of officer's compensation as applicable to allowance for expenses or disbursements. 106 ALR 779.

CHAPTER 28

COUNTY JAILS

- Section 16-2801. A jail must be built in each county.
 16-2802. Other jails authorized.
 16-2803. County jails, by whom kept and for what used.
 16-2804. Rooms required in county jails.
 16-2805. Prisoners to be classified.
 16-2806. Prisoners must be actually confined.
 16-2807. Sheriff must receive federal prisoners.
 16-2808. Provision and agreement for use of county jails for federal prisoners.
 16-2809. Sheriff answerable for safekeeping of such prisoners.
 16-2810. When jail of a contiguous county may be used.
 16-2811. Keeper of jail in contiguous county to receive prisoners.
 16-2812. When jail in contiguous county to cease to be used.
 16-2813. Prisoners to be returned to proper county.
 16-2814. Prisoners may be removed in case of fire.
 16-2815. Prisoners may be removed in case of pestilence.
 16-2816. Papers served on jailer for prisoner.
 16-2817. Guard for jail.
 16-2818. Sheriff to receive all persons duly committed.
 16-2819. Prisoners on civil process, when not to be received.
 16-2820. Prisoners may be required to labor.
 16-2821. Rules and regulations for the performance of labor.
 16-2822. Authority of commissioners.
 16-2823. Duty of sheriff.

16-2801. (12466) A jail must be built in each county. There must be built or provided and kept in good repair in each county one common jail, at the expense of the county, at the county seat.

History: Earlier acts relating to jails and prisoners were Secs. 1-11, pp. 402-404, *Bannack Stat.*; re-en. and new sections added as Secs. 1-17, pp. 501-503, *Cod. Stat.* 1871; re-en. as Secs. 746-762, 5th Div. Rev. Stat. 1879; re-en. with slight amendments as Secs. 1267-1285, 5th Div. Comp. Stat. 1887.

This section en. Sec. 3020, Pen. C. 1895; re-en. Sec. 9757, Rev. C. 1907; re-en. Sec. 12466, R. C. M. 1921.

Cross-References

Attorney, right to consult prisoners, sec. 93-2117.

Rescues and escapes, secs. 94-4201 to 94-4209.

References

Pacific Coal Co. v. Silver Bow County, 79 M 323, 324, 256 P 386.

Collateral References

Prisons 1.
72 C.J.S. Prisons § 2.

41 Am. Jur. 886, Prisons and Prisoners,
§§ 3 et seq.

16-2802. (12467) Other jails authorized. Whenever, in the discretion of the commissioners of the several counties, it is necessary or desirable to build a jail or lockup in any town other than the county seat, they are hereby authorized so to do, but no such jail or lockup must cost to exceed one thousand dollars.

History: En. Sec. 3021, Pen. C. 1895;
re-en. Sec. 9758, Rev. C. 1907; re-en. Sec.
12467, R. C. M. 1921.

16-2803. (12468) County jails, by whom kept and for what used. The common jails in the several counties of this state are kept by the sheriffs of the counties in which they are respectively situated and are used as follows:

1. For the detention of persons committed in order to secure their attendance as witnesses in criminal cases.

2. For the detention of persons charged with crime and committed for trial.

3. For the confinement of persons committed for contempt, or upon civil process, or by other authority of law.

4. For the confinement of persons sentenced to imprisonment therein upon a conviction of crime.

History: En. Sec. 3022, Pen. C. 1895;
re-en. Sec. 9759, Rev. C. 1907; re-en. Sec.
12468, R. C. M. 1921. Cal. Pen. C. Sec.
1597.

References

Majors v. County of Lewis and Clark,
60 M 608, 615, 201 P 268; Pacific Coal
Co. v. Silver Bow County, 79 M 323, 324,
256 P 386.

Cross-Reference

Use of county jail as state prison, sec.
80-743.

16-2804. (12469) Rooms required in county jails. Each county jail must contain a sufficient number of rooms to allow all persons belonging to either one of the following classes to be confined separately and distinctly from persons belonging to either of the other classes:

1. Persons committed on criminal process and detained for trial.
2. Persons already convicted of crime and held under sentence.
3. Persons detained as witnesses, or held under civil process, or under an order imposing punishment for a contempt.

4. Males separately from females.

History: En. Sec. 3023, Pen. C. 1895;
re-en. Sec. 9760, Rev. C. 1907; re-en. Sec.
12469, R. C. M. 1921. Cal. Pen. C. Sec.
1598.

Operation and Effect

Held, that while the word "board" may include both room rent and meals, such word as used in section 25-227, fixing

the fee allowable to a sheriff for "board of prisoners" confined in the county jail, means food or meals only, since under this section, counties must provide for a county jail with a sufficient number of rooms to accommodate the prisoners confined therein. Pacific Coal Co. v. Silver Bow County, 79 M 323, 325, 256 P 386.

16-2805. (12470) Prisoners to be classified. Persons committed on criminal process and detained for trial, persons convicted and under sentence, and persons committed upon civil process must not be kept or put into

the same room, nor shall male and female prisoners (except husband and wife) be kept or put into the same room.

History: En. Sec. 3024, Pen. C. 1895; 12470, R. C. M. 1921. Cal. Pen. C. Sec. re-en. Sec. 9761, Rev. C. 1907; re-en. Sec. 1599.

16-2806. (12471) Prisoners must be actually confined. A prisoner committed to the county jail for trial, or for examination, or upon conviction for a public offense, must be actually confined in the jail until he is legally discharged; and if he is permitted to go at large out of the jail, except by virtue of a legal order or process, it is an escape.

History: En. Sec. 3025, Pen. C. 1895; re-en. Sec. 9762, Rev. C. 1907; re-en. Sec. 12471, R. C. M. 1921. Cal. Pen. C. Sec. 1600.

References

Pacific Coal Co. v. Silver Bow County, 79 M 323, 325, 256 P 386.

16-2807. (12472.1) Sheriff must receive federal prisoners. The sheriff must receive, and keep in the county jail, any prisoner committed thereto by process or order issued under the authority of the United States, until he is discharged according to law, as if he had been committed under process issued under the authority of this state.

History: En. Sec. 1, Ch. 120, L. 1923.

Collateral References

Prisons 2.

72 C.J.S. Prisons § 2.

16-2808. (12472.2) Provision and agreement for use of county jails for federal prisoners. Provision and agreement for the use of said jails and the support and subsistence of such federal prisoners shall first be made by the United States through or by the proper officer or officers, with the board of county commissioners of the county wherein such prisoners are to be confined, such agreement to be in writing and contain a provision that the United States shall, upon claim presented for the county by its county clerk and recorder, pay into the county treasury of the county the sum of one dollar (\$1.00) per day for each and every prisoner held in the county jail upon order or commitment of the United States government or any department or officer thereof. The sheriff of the county, who has custody of such prisoners, shall be paid by the county for their support and subsistence at the rate of seventy-five cents (75¢) per day, per prisoner.

History: En. Sec. 2, Ch. 120, L. 1923; amd. Sec. 1, Ch. 34, L. 1931.

16-2809. (12473) Sheriff answerable for safekeeping of such prisoners. A sheriff to whose custody a prisoner is committed, as provided in the last section, is answerable for his safekeeping, in the courts of the United States, according to the laws thereof.

History: En. Sec. 3027, Pen. C. 1895; re-en. Sec. 9764, Rev. C. 1907; re-en. Sec. 12473, R. C. M. 1921. Cal. Pen. C. Sec. 1602.

Operation and Effect

Held, that the provision of section 5547, United States Revised Statutes, making it the duty of the Attorney General of the United States to contract with "the managers or proper authorities having control" of federal prisoners in county jails for their subsistence, contemplates that the

contract shall be made with the sheriffs and not with the boards of county commissioners, the former, under Code provisions, being the custodians of the jails and answerable for the safekeeping of the persons therein confined. *Majors v. County of Lewis and Clark*, 60 M 608, 615, 201 P 268.

Collateral References

Mistreatment of prisoner as ground for removal of sheriff. 100 ALR 1401.

16-2810. (12474) When jail of a contiguous county may be used. When there is no jail in the county, or when the jail becomes unfit or unsafe for the confinement of prisoners, the district judge may, by written appointment, filed with the clerk, designate the jail of a contiguous county for the confinement of the prisoners of his county, or any of them, and may at any time modify or annul the appointment.

History: En. Sec. 3028, Pen. C. 1895; re-en. Sec. 9765, Rev. C. 1907; re-en. Sec. 12474, R. C. M. 1921. Cal. Pen. C. Sec. 1603.

Collateral References
Criminal Law 1218.
24 C.J.S. Criminal Law §§ 1976, 2000.

16-2811. (12475) Keeper of jail in contiguous county to receive prisoners. A copy of the appointment, certified by the clerk, must be served on the sheriff or keeper of the jail designated, who must receive into his jail all prisoners authorized to be confined therein, pursuant to the last section, and who is responsible for the safekeeping of the persons so committed, in the same manner and to the same extent as if he were sheriff of the county for whose use his jail is designated, and with respect to the persons so committed he is deemed the sheriff of the county from which they were removed.

History: En. Sec. 3029, Pen. C. 1895; re-en. Sec. 9766, Rev. C. 1907; re-en. Sec. 12475, R. C. M. 1921. Cal. Pen. C. Sec. 1604.

16-2812. (12476) When jail in contiguous county to cease to be used. When a jail is erected in the county for the use of which the designation was made, or its jail is rendered fit and safe for the confinement of prisoners, the district judge of that county must, by a written revocation, filed with the clerk, declare that the necessity for the designation has ceased, and that it is revoked.

History: En. Sec. 3030, Pen. C. 1895; re-en. Sec. 9767, Rev. C. 1907; re-en. Sec. 12476, R. C. M. 1921. Cal. Pen. C. Sec. 1605.

16-2813. (12477) Prisoners to be returned to proper county. The clerk must immediately serve a copy of the revocation upon the sheriff of the county, who must thereupon remove the prisoners to the jail from which the removal was had.

History: En. Sec. 3031, Pen. C. 1895; re-en. Sec. 9768, Rev. C. 1907; re-en. Sec. 12477, R. C. M. 1921. Cal. Pen. C. Sec. 1606.

Collateral References
Prisons 13.
72 C.J.S. Prisons § 18.

16-2814. (12478) Prisoners may be removed in case of fire. When a county jail or building contiguous to it is on fire, and there is reason to believe that the prisoners may be injured or endangered, the sheriff or jailer must remove them to a safe and convenient place, and there confine them as long as it may be necessary to avoid the danger.

History: En. Sec. 3032, Pen. C. 1895; re-en. Sec. 9769, Rev. C. 1907; re-en. Sec. 12478, R. C. M. 1921. Cal. Pen. C. Sec. 1607.

16-2815. (12479) Prisoners may be removed in case of pestilence. When a pestilence or contagious disease breaks out in or near a jail, and the physician thereof certifies that it is likely to endanger the health of the prisoners, the district judge may, by a written appointment, designate a safe and convenient place in the county, or the jail in a contiguous county,

as the place of their confinement. The appointment must be filed in the office of the clerk, and authorize the sheriff to remove the prisoners to the place or jail designated, and there confine them until they can be safely returned to the jail from which they were taken.

History: En. Sec. 3033, Pen. C. 1895; 12479, R. C. M. 1921. Cal. Pen. C. Sec. re-en. Sec. 9770, Rev. C. 1907; re-en. Sec. 1608.

16-2816. (12480) Papers served on jailer for prisoner. A sheriff or jailer upon whom a paper in a judicial proceeding, directed to a prisoner in his custody, is served, must forthwith deliver it to the prisoner, with a note thereon of the time of its service. For a neglect to do so he is liable to the prisoner for all damages occasioned thereby.

History: En. Sec. 3034, Pen. C. 1895; re-en. Sec. 9771, Rev. C. 1907; re-en. Sec. 12480, R. C. M. 1921. Cal. Pen. C. Sec. 1609.	Collateral References Prisons 13. 72 C.J.S. Prisons § 18.
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16-2817. (12481) Guard for jail. The sheriff, when necessary, may, with the assent in writing of the district judge, employ a temporary guard for the protection of the county jail, or for the safe keeping of prisoners, the expenses of which are a county charge.

History: En. Sec. 3035, Pen. C. 1895; re-en. Sec. 9772, Rev. C. 1907; re-en. Sec. 12481, R. C. M. 1921. Cal. Pen. C. Sec. 1610.	Collateral References Prisons 9. 72 C.J.S. Prisons § 11.
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16-2818. (12482) Sheriff to receive all persons duly committed. The sheriff must receive all persons committed to jail by competent authority, and provide them with necessary food, clothing, and bedding, for which he shall be allowed a reasonable compensation, to be determined by the board of county commissioners, and, except as provided in the next section, to be paid out of the county treasury.

History: En. Sec. 3036, Pen. C. 1895; re-en. Sec. 9773, Rev. C. 1907; re-en. Sec. 12482, R. C. M. 1921. Cal. Pen. C. Sec. 1611.	References Cited or applied as section 9773, Revised Codes, in <i>In re Mettler</i> , 50 M 299, 305, 146 P 747; <i>Pacific Coal Co. v. Silver Bow County</i> , 79 M 323, 324 et seq., 256 P 386.
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Cross-Reference

Failure to receive person arrested, penalty, sec. 94-3915.

16-2819. (12483) Prisoners on civil process, when not to be received. Whenever a person is committed upon process in a civil action or proceeding, except when the state is a party thereto, the sheriff is not bound to receive such person, unless security is given on the part of the party at whose instance the process is issued, by a deposit of money, to meet the expenses for him of necessary food, clothing, and bedding, or to detain such person any longer than these expenses are provided for. This section does not apply to cases where a party is committed as a punishment for disobedience to the mandates, process, writs, or orders of court.

History: En. Sec. 3037, Pen. C. 1895; 12483, R. C. M. 1921. Cal. Pen. C. Sec. re-en. Sec. 9774, Rev. C. 1907; re-en. Sec. 1612.

16-2820. (12484) Prisoners may be required to labor. Persons confined in the county jail under a judgment of imprisonment rendered in a criminal

action or proceeding may be required by the board of county commissioners to perform labor on the public works or ways in the county.

History: En. Sec. 3038, Pen. C. 1895;
re-en. Sec. 9775, Rev. C. 1907; re-en. Sec.
12484, R. C. M. 1921. Cal. Pen. C. Sec.
1613.

Collateral References

Convicts↔7.

18 C.J.S. Convicts § 13.

41 Am. Jur. 901, Prisons and Prisoners,
§§ 25 et seq.

16-2821. (12485) Rules and regulations for the performance of labor. The board of county commissioners making such order may prescribe and enforce the rules and regulations under which such labor is to be performed.

History: En. Sec. 3039, Pen. C. 1895; 12485, R. C. M. 1921. Cal. Pen. C. Sec.
re-en. Sec. 9776, Rev. C. 1907; re-en. Sec. 1614.

16-2822. (12486) Authority of commissioners. The county commissioners have the care of building, inspecting, and repairing the jail, and must, once every three months, inquire into its state, as respects the security thereof, and the treatment and condition of prisoners, and must take all necessary precaution against escape, sickness, or infection.

History: En. Sec. 3040, Pen. C. 1895;
re-en. Sec. 9777, Rev. C. 1907; re-en. Sec.
12486, R. C. M. 1921.

Collateral References

Prisons↔1.

72 C.J.S. Prisons § 2.

16-2823. (12487) Duty of sheriff. The sheriff of each county must, on the first Monday in January, and every three months thereafter, return to the county commissioners a certified list of the names of all prisoners in his custody on the last day of the preceding month, with the time and cause of their confinement, the length of time for which they were committed, and the number received and discharged during the preceding three months, and in case he fails so to do, the said sheriff must not receive any compensation for the sustenance of the prisoners in his custody.

History: En. Sec. 3041, Pen. C. 1895;
re-en. Sec. 9778, Rev. C. 1907; re-en. Sec.
12487, R. C. M. 1921.

Collateral References

Prisons↔9.

72 C.J.S. Prisons § 11.

CHAPTER 29

COUNTY CLERK

- Section** 16-2901. County clerk as ex officio recorder to procure record books.
16-2902. What to be recorded.
16-2903. Recordation of certain instruments declared proper.
16-2904. Same—validation of such instruments.
16-2905. Indexes to be kept.
16-2906. Index to maps and plats.
16-2907. To record decrees of partition or affecting title to real property.
16-2908. Filing of copy to impart notice.
16-2909. Must keep a map book.
16-2910. May keep two or more indexes in the same volume—arrangement of indexes.
16-2911. Duty on receipt of instrument to be recorded by the county clerk and recorder.
16-2912. Recorded instrument to be indorsed.
16-2913. To make searches.
16-2914. Liable for neglect of certain duties.
16-2915. Fees to be prepaid.
16-2916. Records open to inspection.
16-2917. Duties of county clerk.

- 16-2918. Warrants to be numbered.
- 16-2919. Other duties.
- 16-2920. Duty of county clerk.
- 16-2921. Destruction of chattel mortgages, conditional sales contracts and satisfactions after ten years authorized.
- 16-2922. Chattel mortgages, conditional sales contracts, seed and threshers' liens to be retained eight years from and after extinction of lien.
- 16-2923. Destruction of records, when allowed.
- 16-2924. Annual report of county clerk.
- 16-2925. Salary may be withheld until annual statement made.

16-2901. (4795) County clerk as ex officio recorder to procure record books. The county clerk, as ex officio recorder, must procure such books for records as the business of his office requires, but orders for the same must first be obtained from the board of county commissioners. He has the custody and must keep all the books, records, maps, and papers deposited in his office.

History: En. Sec. 4410, Pol. C. 1895; re-en. Sec. 3031, Rev. C. 1907; re-en. Sec. 4795, R. C. M. 1921. Cal. Pol. C. Sec. 4234.

Cross-References

Abandoned beds of lakes and streams, filing surveys, sec. 81-2303.
 Abandonment of counties, duties, secs. 16-4002 to 16-4023.
 Acknowledgments, power to take, sec. 39-102.
 Adoption of children, duties, sec. 69-525.
 Annual financial statement, sec. 16-1023.
 Attachment books, duty to keep, sec. 93-4340.
 Attachment of range stock, sec. 93-3246.
 Board of county commissioners, clerk, sec. 16-907.
 Bond, sec. 6-201.
 Budgets, duties, secs. 16-1904 to 16-1908.
 Certificates of redemption, filing, sec. 93-5836.
 Claims against county, duty, secs. 16-1801 to 16-1811.
 County bonds, duties, secs. 16-2001 to 16-2050.
 County welfare board, clerk, sec. 71-215.
 Deputies, sec. 16-3701.
 Equalization board, duties, sec. 84-610.
 Estray and lost property book, duty to keep, sec. 20-412.

Highways, duties, secs. 32-301, 32-302, 32-405 to 32-409.

Irrigation district records, secs. 89-1204, 89-2106.

License blanks, duties, sec. 84-2701.
 Location of county seat, duties, secs. 16-401 to 16-412.

Lost property, duties concerning, secs. 20-412, 20-416.

Nominations register, keeping, sec. 23-913.

Notary public, certificate of official character, sec. 56-112.

Practice of law forbidden, sec. 93-902.
 Removal of county seat, secs. 16-301 to 16-309.

Rural improvement districts, duties, secs. 16-1614, 16-1616, 16-1628.

Salary, sec. 25-605.
 Soldiers' discharge certificates, recording without charge, sec. 77-801.

Tax sale certificate, filing, sec. 84-4135.
 Verification of signatures on initiative and referendum, Sec. 37-103.

Vital statistics, duties, secs. 69-501 to 69-539.

Water rights appropriations, duties, secs. 89-810, 89-816, 89-838.

Collateral References

Counties—89.
 20 C.J.S. Counties § 141.

16-2902. (4796) What to be recorded. He must, upon payment of his fees for the same, record, or photograph, or correctly copy, separately, in large and well-bound, or to be bound, separate books, either in a fair hand or by printing or by typewriting, or by photographic process, or by the use of prepared blank forms:

1. Deeds, grants, transfers, contracts to sell or convey real estate and mortgages of real estate, releases of mortgages, powers of attorney to convey real estate, and leases which have been acknowledged or proved;
2. Certificates of births and deaths;
3. Wills devising real estate admitted to probate;
4. Official bonds;

5. Transcripts of judgments which by law are made liens upon real estate;

6. Instruments describing or relating to the separate property of married women, and sole trader judgments;

7. All orders and decrees made by the district court in probate matters affecting real estate which are required to be recorded;

8. Notice of pre-emption claims;

9. Notice and declaration of water rights;

10. Assignments for the benefit of creditors;

11. Affidavits of annual work done on mining claims;

12. Notices of mining locations and declaratory statement;

13. Estrays and lost property;

14. A book containing appraisement of state lands;

15. Such other writings as are required or permitted by law to be recorded; provided, nothing herein shall be construed as preventing the recording or photographing or copying of such instruments, separately, upon a single or loose page or pages of a book, if such page or pages shall immediately become a part of such book or volume, which, when completed, shall be firmly bound and the pages thereof securely locked or sealed into the volume.

Whenever the laws of the state of Montana require or permit any instrument to be recorded, such recording may be made in the manner or by any of the processes hereinbefore prescribed.

History: En. Sec. 4411, Pol. C. 1895; re-en. Sec. 3032, Rev. C. 1907; amd. Sec. 1, Ch. 68, L. 1917; re-en. Sec. 4796, R. C. M. 1921; amd. Sec. 1, Ch. 24, L. 1945. Cal. Pol. C. Sec. 4235.

Cross-Reference

Certified copies of instruments affecting real property admissible in evidence, sec. 93-1101-21.

Operation and Effect

Since an option to purchase land is not

itself a contract to purchase the land, the book kept by the county clerk and recorder for the recording of contracts for the purchase or sale of real property is not, but the miscellaneous record book required by this section, subd. 15, for entry of such other writings as are required or permitted by law to be recorded, is the proper book for recordation of such a contract. *Guerin v. Sunburst Oil & Gas Co.*, 68 M 365, 369, 218 P 949.

16-2903. (4797) Recordation of certain instruments declared proper. All instruments which have heretofore been filed for record in the several recorders' offices of the state of Montana, including all instruments which were offered for record pursuant to the previous section, which have been recorded in the offices of the recorders of the several counties by being correctly copied, separately, in large and well-bound, or to be bound, separate books, either in a fair hand or by printing or by typewriting, or by the use of prepared blank forms, or by being so inscribed or printed on a single loose leaf or leaves of a book, which leaf or leaves have heretofore or are to become a permanent part of any such book or volume, which, when completed, has or shall have the pages thereof securely locked, sealed, or bound into the volume, shall be and are hereby declared to be properly recorded under the laws of the state of Montana.

History: En. Sec. 1, Ch. 138, L. 1917; re-en. Sec. 4797, R. C. M. 1921.

Collateral References

Records 6.

76 C.J.S. Records § 10.

16-2904. (4798) Same—validation of such instruments. And all such instruments as have been recorded in accordance with the requirements of the foregoing section are hereby expressly validated, in so far as validation may be necessary to establish them as correctly or legally recorded instruments for all purposes.

History: En. Sec. 2, Ch. 138, L. 1917;
re-en. Sec. 4798, R. C. M. 1921.

16-2905. (4799) Indexes to be kept. Every county clerk, as ex officio recorder, must keep:

1. An index of deeds, grants, and transfers, and contracts to sell or convey real estate, labeled "Grantors," each page divided into four columns, headed respectively: "Names of grantors," "Names of grantees," "Date of deeds, grants, transfers, or contracts," and "Where recorded";

2. An index of deeds, labeled "Grantees," each page divided into four columns, headed respectively: "Names of grantees," "Names of grantors," "Date of deeds, grants, transfers, or contracts," and "Where recorded";

3. Two indexes of mortgages, labeled respectively: "Mortgages of real property," "Mortgages of personal property," with the pages thereof divided into five columns, headed respectively: "Names of Mortgagor," "Names of mortgagees," "Dates of mortgages," "Where recorded," "When filed," "When canceled";

4. Two indexes of mortgages, labeled respectively: "Mortgages of real property," "Mortgages of personal property," with the pages thereof divided into five columns, headed respectively: "Names of Mortgagees," "Names of mortgagors," "Date of mortgage," "Where recorded," "When filed," "When canceled";

5. Two indexes of releases of mortgages, labeled respectively: "Releases of mortgages of real property—Mortgagees," "Releases of mortgages of personal property—Mortgagees," with the pages thereof divided into six columns, headed respectively: "Parties whose mortgages are released," "Parties releasing," "Date of release," "Where recorded," or "Where filed," "Date of mortgages released," "Where mortgages released are recorded," or if personal property, "When filed";

6. An index of powers of attorney, labeled "Powers of attorney," each page divided into five columns, headed respectively: "Names of parties executing powers," "To whom powers are executed," "Date of powers," "Date of recording," "To whom powers are executed";

7. An index of leases, labeled "Leases," each page divided into four columns, headed respectively: "Names of lessors," "Names of lessees," "Date of leases," "When and where recorded";

8. An index of leases, labeled "Lessees," each page divided into four columns respectively: "Names of lessees," "Names of lessors," "Date of leases," "When and where recorded";

9. An index of marriage certificates, labeled "Marriage certificate—Men," each page divided into six columns, headed respectively: "Men married," "To whom married," "When married," "By whom married," "Where married," "Where certificates are recorded";

10. An index of marriage certificates, labeled "Marriage certificates—

Women," each page divided into six columns, headed respectively: "Women married," (and under this head placing the family names of the women), "To whom married," "When married," "By whom married," "Where married," "Where certificates are recorded";

11. An index of assignments of mortgages and leases, labeled "Assignments of mortgages and leases—Assignors," each page divided into five columns, headed respectively: "Assignors," "Assignees," "Instruments assigned," "Date of assignment," "When and where recorded";

12. An index of assignments of mortgages and leases, labeled "Assignments of mortgages and leases—Assignees," each page divided into five columns, headed respectively: "Assignees," "Assignors," "Instruments," "Date of assignments," "When and where recorded";

13. An index of wills, labeled "Wills," each page divided into four columns, headed respectively: "Names of testators," "Date of wills," "Date of probate," "When and where recorded";

14. An index of official bonds, labeled "Official bonds," each page divided into five columns, headed respectively: "Names of officers," "Names of offices," "Date of bonds," "Amount of bonds," "When and where recorded";

15. An index of notices of mechanics' liens, labeled "Mechanics' liens," each page divided into three columns, headed respectively: "Parties claiming liens," "Against whom claimed," "Notices, when filed";

16. An index to transcripts of judgments, labeled "Transcripts of judgments," each page divided into seven columns, headed respectively: "Judgment debtors," "Judgment creditors," "Amount of judgments," "Where recovered," "When recovered," "When transcript filed," "When judgment satisfied";

17. An index of attachments, labeled "Attachments," each page divided into six columns, headed respectively: "Parties against whom attachments are issued," "Parties issuing attachments," "Notices of attachments," "When filed," "When attachments discharged";

18. An index of notices of the pendency of actions, labeled "Notices of actions," each page divided into three columns, headed respectively: "Parties to actions," "Notices, when recorded," "When filed";

19. An index of certificates of sale of real estate sold under execution or under orders made in any judicial proceedings, labeled "Certificates of sale," each page divided into four columns, headed respectively: "Plaintiff," "Defendant," "Purchaser at sale," "Date of sale";

20. An index of the separate property of married women and sole trader judgments labeled "separate property of married women and sole traders," each page divided into five columns, headed respectively: "Names of married women," "Names of their husbands," "Nature of instruments recorded," "When recorded," "Where recorded";

21. An index to affidavits for annual work done on mining claims, showing the name of the affiant, the name of the claim, where situated, and the year when the work was done, labeled "Annual work on mining claims";

22. An index of mining claims and declaratory statements, labeled "Notices of location of mining claims and declaratory statements," each

page divided into four columns, headed respectively: "Locators," "Name of claim," "Notice, when filed," "Where recorded";

23. An index to the register of births and deaths;

24. An index to notices and declarations of water rights;

25. An index to the "Estray and lost property book";

26. An index to the record of assignments for the benefit of creditors, containing names of assignor and assignee, date and where recorded, and inventory when filed;

27. A miscellaneous index, in which must be indexed papers not hereinbefore stated.

History: En. Sec. 4412, Pol. C. 1895; re-en. Sec. 3033, Rev. C. 1907; re-en. Sec. 4799, R. C. M. 1921. Cal. Pol. C. Sec. 4236.

Tract Index—Implied Powers

In view of the provisions of sections 84-4151, 84-4152 and 84-4156 and the powers conferred upon the commissioners by sections 16-1001 to 16-1032, and under the rule that any appropriate means of carrying out a statutory power conferred on a public officer or board without prescribing the mode of its exercise may be adopted, the commissioners under their implied

powers, may authorize the installation and maintenance of a tract index in the clerk's office for information on tax sales and application for tax deeds. Ransom v. Pingel, 104 M 119, 122, 65 P 2d 616.

References

Guerin v. Sunburst Oil & Gas Co., 68 M 365, 369, 218 P 949.

Collateral References

Records⇒8.
76 C.J.S. Records § 16.

16-2906. (4800) **Index to maps and plats.** He must keep an index to the book of maps and plats, which must contain the name of the proprietor of the town, village, or addition platted, and a general description of the same.

History: En. Sec. 4413, Pol. C. 1895; re-en. Sec. 3034, Rev. C. 1907; re-en. Sec. 4800, R. C. M. 1921.

16-2907. (4801) **To record decrees of partition or affecting title to real property.** He must file and record with the record of deeds, grants, and transfers, certified copies of final judgments or decrees partitioning or affecting the title or possession of real property, any part of which is situate in the county.

History: En. Sec. 4414, Pol. C. 1895; re-en. Sec. 3035, Rev. C. 1907; re-en. Sec. 4801, R. C. M. 1921. Cal. Pol. C. Sec. 4238.

Recording Is Not Condition Precedent to Judgment Becoming a Lien

This section and that following define the effect of recording a final judgment as far as imparting constructive notice is concerned, but they are not controlling as to when the judgment becomes a lien;

it is section 93-5708 which determines when the lien becomes effective—that the lien attaches when the judgment is docketed; recordation of the judgment is not made a condition precedent to its becoming a lien. Gaines v. Van Demark, 106 M 1, 9, 74 P 2d 454.

Collateral References

Judgment⇒766.
49 C.J.S. Judgment § 463.

16-2908. (4802) **Filing of copy to impart notice.** Every such certified copy of a judgment of partition or any other judgment, from the time of filing the same for record, imparts notice to all persons of the contents thereof, and subsequent purchasers, mortgagees, and lien holders purchase and take with like notice and effect as if such property or judgment was a duly recorded deed, grant, or transfer.

History: En. Sec. 4415, Pol. C. 1895;
re-en. Sec. 3036, Rev. C. 1907; re-en. Sec.
4802, R. C. M. 1921. Cal. Pol. C. Sec. 4239.

Collateral References

Judgment \S 787.
49 C.J.S. Judgment \S 485.

References

Gaines v. Van Demark, 106 M 1, 9, 74 P
2d 454.

16-2909. (4803) Must keep a map book. He must keep a well-bound book, which must contain maps of towns, villages, or additions to the same within his county, together with the description, acknowledgment, or other writing thereon.

History: En. Sec. 4416, Pol. C. 1895;
re-en. Sec. 3037, Rev. C. 1907; re-en. Sec.
4803, R. C. M. 1921.

16-2910. (4804) May keep two or more indexes in the same volume—arrangement of indexes. He may keep in the same volume any two or more of the indexes mentioned in section 16-2905 of this code, but the several indexes must be kept distinct from each other, and the volumes distinctly marked on the outside in such way as to show all the indexes kept therein. The names of the parties in the first column of the several indexes must be arranged in alphabetical order, and when a conveyance is executed by a sheriff, the name of the sheriff and the party charged in the execution must both be inserted in the index; and when an instrument is recorded to which an executor, administrator, or trustee is a party, the name of such executor, administrator, or trustee, together with the name of the testator or intestate, or party for whom the trust is held, must be inserted in the index.

History: En. Sec. 4417, Pol. C. 1895;
re-en. Sec. 3038, Rev. C. 1907; re-en. Sec.
4804, R. C. M. 1921. Cal. Pol. C. Sec. 4240.

will be impaired or affected by the failure
of a county clerk and recorder to index or
enter the same, as required by statute.
Palmer v. Murray, 8 M 174, 183, 19 P 553.

Operation and Effect

No rights under a recorded instrument

16-2911. (4805) Duty on receipt of instrument to be recorded by the county clerk and recorder. When any instrument, paper, or notice, authorized by law to be recorded, is deposited in the office of the county clerk, as ex-officio recorder, for record, accompanied by the required fee, he must indorse upon the same, the time it was received, noting the year, month, day, hour and minute of its reception, and the reception of the instrument must be immediately entered in the county clerk and recorder's reception book. The county clerk must record said instrument without delay, together with the acknowledgment, proofs, and certificates written upon or annexed to the same, with the plats, surveys, schedule, and other papers thereto annexed, in the order and as of the time when the same was received for record, and must note at the foot of the record the exact time of its reception. The county clerk shall not receive for recording, any deed, mortgage or assignment of mortgage unless the postoffice address of the grantee, mortgagee or assignee of the mortgagee, as the case may be, is contained therein, provided that this requirement shall not affect the validity of the record of any instrument which has been or may be recorded.

History: En. Sec. 4418, Pol. C. 1895; 4805, R. C. M. 1921; amd. Sec. 1, Ch. 2,
re-en. Sec. 3039, Rev. C. 1907; re-en. Sec. L. 1929; amd. Sec. 1, Ch. 27, L. 1931; amd.

Sec. 1, Ch. 11, L. 1949. Cal. Pol. C. Sec. 4241.

Collateral References

Records 6.

76 C.J.S. Records § 11.

16-2912. (4806) Recorded instrument to be indorsed. He must also indorse upon each instrument, paper, or notice, the time when and the book and pages in which it is recorded, and must thereafter deliver it, upon request, to the party leaving the same for record, or to his order.

History: En. Sec. 4419, Pol. C. 1895; re-en. Sec. 3040, Rev. C. 1907; re-en. Sec. 4806, R. C. M. 1921. Cal. Pol. C. Sec. 4242.

16-2913. (4807) To make searches. He may, upon the application of any person, and upon the payment or tender of the fees therefor, make searches for conveyances, mortgages, and all other instruments, papers, or notices recorded or filed in his office, and furnish a certificate thereof, stating the names of the parties to such instruments, papers, and notices, the dates thereof, the year, month, day, hour, and minute they were recorded or filed, the extent to which they purport to affect the property to which they relate, and the book and pages where they are recorded.

History: En. Sec. 4420, Pol. C. 1895; re-en. Sec. 3041, Rev. C. 1907; re-en. Sec. 4807, R. C. M. 1921. Cal. Pol. C. Sec. 4243.

16-2914. (4808) Liable for neglect of certain duties. If any county clerk, as ex officio recorder, to whom an instrument, proved or acknowledged according to law, or any paper or notice which may be by law recorded, is delivered for record:

1. Neglects or refuses to record such instrument, paper, or notice, within reasonable time after receiving the same; or

2. Records any instruments, papers, or notices untruly, or in any other manner than as hereinbefore directed; or

3. Neglects or refuses to keep in his office such indexes as are required by this article, or to make the proper entries therein; or

4. Neglects or refuses to make the searches and to give the certificates required by this chapter; or if such searches or certificates are incomplete or defective, when such incompleteness or defect is due to his direct responsibility particularly affecting the property in respect to which it is requested; or

5. Alters, changes, or obliterates any records deposited in his office, or inserts any new matter therein, he is liable to the party aggrieved for three times the amount of the damages which may be occasioned thereby, and is punishable as provided in this code.

History: En. Sec. 4421, Pol. C. 1895; re-en. Sec. 3042, Rev. C. 1907; re-en. Sec. 4808, R. C. M. 1921. Cal. Pol. C. Sec. 4244.

16-2915. (4809) Fees to be prepaid. He is not bound to record any instrument, or file any paper or notice, or furnish any copies, or to render any service connected with his office, until the fee for the same, as prescribed by law, is, if demanded, paid or tendered.

History: En. Sec. 4422, Pol. C. 1895; re-en. Sec. 3043, Rev. C. 1907; re-en. Sec. 4809, R. C. M. 1921. Cal. Pol. C. Sec. 4245.

Cross-Reference

Fees enumerated, sec. 25-231.

Operation and Effect

Where a paper entitled to be filed is deposited with the proper custodian, and, if prepayment of the filing fee is required, the fee tendered, it is filed, the marking thereof as "filed" not constituting the filing. In re Dewar's Estate, 10 M 426, 437, 25 P 1025.

Under this section the county clerk may, but is not required to, demand prepayment of filing or other fees; section 25-208 having to do with the payment of fees in advance, being inapplicable. Minneapolis Steel & Machinery Co. v. Thomas, 54 M 132, 135, 168 P 40.

Id. Where a corporation sent its annual report to the county clerk with the request that he advise it as to his fee for filing his answer, accompanying his refusal to file it because not acknowledged, "will state that the fee for filing is one dollar,"

was not such a demand for prepayment as is contemplated by this section.

Recording Is Not Condition Precedent to Judgment Becoming a Lien

This section and section 16-2907 define the effect of recording a final judgment as far as imparting constructive notice is concerned, but they are not controlling as to when the judgment becomes a lien; it is section 93-5708 which determines when the lien becomes effective. The lien attaches when the judgment is docketed and recordation of the judgment is not made a condition precedent to its becoming a lien. Gaines v. Van Demark, 106 M 1, 9, 74 P 2d 454.

Collateral References

Records⇒5.

76 C.J.S. Records § 22.

16-2916. (4810) Records open to inspection. All books or records, maps, charts, surveys, and other papers on file in his office, must, during office hours, be open for the inspection of any person who may desire to inspect them, and may be inspected without charge; and he must arrange the books of record and indexes in his office in such suitable places as to facilitate their inspection.

History: En. Sec. 4423, Pol. C. 1895; re-en. Sec. 3044, Rev. C. 1907; re-en. Sec. 4810, R. C. M. 1921. Cal. Pol. C. Sec. 4246.

Collateral References

Records⇒14.

76 C.J.S. Records § 35.

References

State ex rel. Holloran v. McGrath, 104 M 490, 497, 67 P 2d 838.

16-2917. (4811) Duties of county clerk. The county clerk must:

1. Take charge of and safely keep, or dispose of according to law, all books, papers, and records which may be filed or deposited in his office;
2. Act as clerk of the board of county commissioners;
3. Draw warrants on the county treasurer in favor of all persons entitled thereto in payment of all claims and demands chargeable against the county, which have been legally examined, allowed, and ordered paid by the board of county commissioners; also for all debts and demands against the county, when the amounts are fixed by law, and which are not directed to be audited by some other person or tribunal; which warrants shall be signed by the county clerk and the chairman of the board of county commissioners, excepting warrants drawn on the redemption fund;

4. He must keep accounts current with the treasurer, and when any person deposits with the county treasurer any money paid into the treasury, the county clerk shall be furnished by the treasurer with a duplicate of the receipt issued to such person, which duplicate receipt shall be filed in the office of the county clerk, and such county clerk shall charge the treasurer with the amount thereof.

5. Make the annual statement as prescribed in section 16-2924.

History: En. Sec. 4424, Pol. C. 1895; 4811, R. C. M. 1921; amd. Sec. 1, Ch. 79, re-en. Sec. 3045, Rev. C. 1907; re-en. Sec. L. 1923. Cal. Pol. C. Sec. 4204.

Subd. 3**Drainage District Assessments, Liquidated Claims**

Assessments made by drainage district under section 89-2813, for construction, maintenance, etc. become judgments when confirmed by district court, and when levied for benefits accruing to highways are liquidated claims which do not require audit by board of commissioners, however, Budget Law, 16-1901 to 16-1911 must be observed in payment. State ex rel. Valley Center Drain District v. Board of County Commrs., 100 M 581, 588, 51 P 2d 635.

References

Cited or applied as section 3045, Revised Codes, in State ex rel. Dolin v. Major, 58 M 140, 147, 192 P 618; State v. District Court et al., 62 M 600, 601, 205 P 955; State ex rel. Lockwood v. Tyler, 64 M 124, 131, 208 P 1081; Kalman v. Treasure County et al., 84 M 285, 288, 275 P 743.

Collateral References

Counties⇒89, 164.
20 C.J.S. Counties §§ 141, 248.

16-2918. (4812) Warrants to be numbered. All warrants issued by the county clerk during each year, commencing with first Monday in January, must be numbered consecutively, and the number, date, and amount of each, and the name of the person to whom payable, and the purpose for which drawn, must be stated thereon, and they must, at the time they are issued, be registered by him.

History: En. Sec. 4425, Pol. C. 1895; re-en. Sec. 3046, Rev. C. 1907; re-en. Sec. 4812, R. C. M. 1921. Cal. Pol. C. Sec. 4219.

Collateral References

Counties⇒165.
20 C.J.S. Counties § 249.

16-2919. (4813) Other duties. The county clerk must keep such other records and books, and perform such other duties as are prescribed by law.

History: En. Sec. 4426, Pol. C. 1895; re-en. Sec. 3047, Rev. C. 1907; re-en. Sec. 4813, R. C. M. 1921. Cal. Pol. C. Sec. 4205.

16-2920. (4813.1) Duty of county clerk. The county clerk of any county is also clerk of the county commissioners and ex officio recorder. Any duty imposed by law upon such officer, either as county clerk, clerk of the county commissioners, or as recorder, shall be performed by the county clerk, and any official act performed or certified by the county clerk shall be as valid and effectual as if performed and certified to by him as clerk of the county commissioners, or as recorder.

History: En. Sec. 4671, Civ. C. 1895; re-en. Sec. 6233, Rev. C. 1907; re-en. Sec. 4813a, R. C. M. 1921.

16-2921. (4813.2) Destruction of chattel mortgages, conditional sales contracts and satisfactions after ten years authorized. Any chattel mortgage or contract of conditional sale on file in the office of the county clerk and recorder of any county within the state of Montana, which has been previously satisfied either by written satisfaction or marginal satisfaction, may, at any time after ten (10) years from the date of such satisfaction, be destroyed by the county clerk and recorder in the presence of the county commissioners, and any written satisfaction thereof filed may be likewise destroyed at said time.

History: En. Sec. 1, Ch. 46, L. 1931.

Collateral References

Records⇒13.
76 C.J.S. Records § 34.

16-2922. (4813.3) **Chattel mortgages, conditional sales contracts, seed and threshers' liens to be retained eight years from and after extinction of lien.** All chattel mortgages, conditional sales contracts, seed liens and threshers' liens, which have heretofore or shall hereafter be filed for record in the office of any county clerk and recorder of the several counties in the state and the office of the registrar of motor vehicles shall be retained by such county clerk or registrar of motor vehicles in a file kept by him for such purposes, for a period of eight years from and after the time when said mortgage, conditional sales contract, seed lien, or threshers' lien has ceased to be a lien on the property described therein, either by virtue of the original mortgage or any renewal thereof.

History: En. Sec. 1, Ch. 113, L. 1935.

Collateral References

Records↪13.

76 C.J.S. Records § 34.

16-2923. (4813.4) **Destruction of records, when allowed.** Upon the expiration of the period of time specified in section 16-2922, the county clerk and recorder or registrar of motor vehicles may destroy all chattel mortgages, conditional sales contracts, seed liens and threshers' liens, which have been preserved for the period of time specified in this act.

History: En. Sec. 2, Ch. 113, L. 1935.

Collateral References

Cross-Reference

Records↪13.

Destruction of records, sec. 59-514.

76 C.J.S. Records § 34.

16-2924. (4814) **Annual report of county clerk.** Within forty days after the close of each fiscal year, the county clerk shall make out and present to the board of county commissioners and the state examiner, a full, true and complete statement of the financial condition of the county. Such statement shall be made out on the form designated by the state examiner and must show:

(1) A detailed description of all of the resources and liabilities of the county and the book value thereof;

(2) The amount of moneys received showing the source of such revenue;

(3) The amount of moneys disbursed, with the purpose of disbursement;

(4) The operation of each of the cash and warrant accounts, showing the balance at the beginning of the year, the credits, the debits and the balance at the end of the year.

(5) The assessed valuation of the real and personal property of the county, the rate of taxation, the amount of taxes delinquent for the preceding years and such other items as the state examiner may prescribe.

History: Ap. p. Sec. 778, 5th Div. Comp. Stat. 1887; amd. Sec. 4294, Pol. C. 1895; re-en. Sec. 2953, Rev. C. 1907; re-en. Sec. 4814, R. C. M. 1921; amd. Sec. 1, Ch. 2, L. 1925; amd. Sec. 1, Ch. 106, L. 1927.

Cross-Reference

Annual financial statement, sec. 16-1023.

Collateral References

Counties↪159.

20 C.J.S. Counties § 232.

16-2925. (4814.1) **Salary may be withheld until annual statement made.** The state examiner is hereby authorized to cause the salary warrant of the county clerk of any county to be withheld from said officer until he has complied with the provisions of this act.

History: En. Sec. 2, Ch. 106, L. 1927.

Collateral References

Counties ~~67~~ 74(2).

20 C.J.S. Counties § 117.

CHAPTER 30

CLERK OF THE DISTRICT COURT

- Section 16-3001. Duties and records to be kept.
16-3002. Other duties.
16-3003. Indexes to court records.
16-3004. Duties concerning same.
16-3005. Index of bonds in criminal cases to be kept.

16-3001. (4815) Duties and records to be kept. The clerk of the district court, in addition to the duties prescribed elsewhere, must:

1. Take charge of and safely keep, or dispose of according to law, all books, papers, and records which may be filed or deposited in his office;

2. Act as clerk of the district court, and attend each term or session thereof, and upon the judges at chambers when required;

3. Issue all process and notices required to be issued; enter all orders, judgments, and decrees proper to be entered; keep in each court a register of action, as provided in the code of civil procedure, which must also state the names of the attorneys and all fees charged in each action, and a list of all the fees charged;

4. Keep for the district court, in separate volumes, an index of all suits, labeled "General index—Plaintiffs," each page of which must be divided into seven columns, under their respective heads, alphabetically arranged as follows: "Number of suit," "Plaintiffs," "Defendants," "Date of judgment," "Number of judgment," "Page of entry of judgment in judgment book," "Page of minute-book of district court"; also, an index labeled "General index—defendants," each page of which must be divided into seven columns under their respective heads, alphabetically arranged as follows: "Number of suit," "Defendants," "Plaintiffs," "Date of judgment," "Number of judgment," "Page of entry of judgment in judgment book," "Page in minute-book of district court";

5. Keep a minute-book, which must contain the daily proceedings of court, which may be signed by the clerk, which minute-book must be indexed in the names of both defendant and plaintiff;

6. Keep a book called "Record of probate proceedings," which must contain all the orders and proceedings of the district court sitting in probate matters, as prescribed elsewhere in this code, which index must be indexed in the name of the deceased person, the executor or administrator, the guardian or ward;

7. Keep a book called the "Probate record book," in which must be recorded all wills, bonds, letters of administration, letters testamentary, and other papers as prescribed elsewhere in this code, which record must be indexed in like manner as the "Record of probate proceedings";

8. Keep two books, in one of which must be entered in alphabetical order the names of all persons who from the organization of the court have

declared, or who may hereafter declare their intention to become citizens of the United States, and the date of such declaration, which book must be labeled "Declaration of intention to become citizens of the United States," and in the other of which must be entered in alphabetical order the names of all persons who have been or may be hereafter admitted citizens of the United States by the court of which he is clerk, which book must be labeled "Naturalization—Final papers," and enter in a separate column, opposite each name, the country of which such person was before a citizen or subject, the date of his admission, and the page of the minute-book or book of record containing the order admitting him a citizen;

9. Keep a book, called "Register of criminal actions," in which must be entered the title and number of the action, with a memorandum of every paper filed, order or proceeding had therein, with the date thereof, and the name of every witness, number of days in attendance, and his legal fees, and a proper index to the same;

10. Keep a book, called a "Register of probate and guardianship proceedings," in which must be entered the name of the estate, the register number, with a memorandum of every paper filed, order or proceeding had therein, with the date thereof, and the fees charged;

11. Keep an index book of persons sent to the insane asylum, as provided in section 38-208;

12. Keep a fee book, in which must be shown, in an itemized form, all fees that he has received for any services rendered as such clerk;

13. Keep a book, called a "Book of jurors' certificates," in which must be contained the blank certificates and stubs to be filled, as provided in this code;

14. Keep a "witness book," in which must be contained blank certificates and stubs to be filled, as provided in this code;

15. Keep a record of the attendance of all jurors, and of witnesses in criminal actions, and compute the mileage of each.

History: En. Sec. 4440, Pol. C. 1895; 65 M 51, 61, 210 P 756; State v. Turlock, re-en. Sec. 3048, Rev. C. 1907; re-en. Sec. 4815, R. C. M. 1921. Cal. Pol. C. Sec. 4204. 76 M 549, 559, 248 P 169.

References

Cited or applied as section 3048, Revised Codes, in State ex rel. Anderson v. District Court, 56 M 244, 184 P 218; State v. Reed,

Collateral References

Clerks of Courts 67; Courts 113.
14 C.J.S. Clerks of Courts § 38; 21 C.J.S. Courts §§ 226, 228, 229.

16-3002. (4816) Other duties. He must keep such other records and perform such other duties as are prescribed by law.

History: En. Sec. 4441, Pol. C. 1895; re-en. Sec. 3049, Rev. C. 1907; re-en. Sec. 4816, R. C. M. 1921.

16-3003. (4817) Indexes to court records. Hereafter each clerk of court in each county of the respective judicial districts of the state shall keep, in addition to the records now required by law, a book called "General index to court records," and also a second book to be called "Inverse general index to court records." The pages of the "General index" shall be divided into eighteen columns, and the pages of the "Inverse general index"

shall be divided into five columns, with heads to the respective columns as follows:

FOR THE "GENERAL INDEX" THUS:

No.
Plaintiff
Defendant
Nature of Action
Date Begun
Entries in Court Record
Pages
Date Dismissed
Date of Judgment
Amount of Judgment
Book
Page
Judgment Record
Book
Page
Judgment Docket
Execution Date Issue
Book
Page
Execution Book
Book
Page
Order of Sale
Date Appealed
Remittitur Date Filed
Remarks

FOR THE "INVERSE GENERAL INDEX" THUS:

No.	Defendants	Plaintiffs	Nature of Action	Date Begun

History: En. Sec. 4442, Pol. C. 1895; re-en. Sec. 3050, Rev. C. 1907; re-en. Sec. 4817, R. C. M. 1921.

16-3004. (4818) **Duties concerning same.** Said clerk shall cause to be made in each of said index books correct entries, under the appropriate headings, of each and every action begun in the court of which he is clerk, entering them alphabetically by the name of the plaintiff in the "General index" and alphabetically by the name of the defendants in the "Inverse

general index," continuing to make such entries in the manner aforesaid from time to time as the progress of the case may require.

History: En. Sec. 4443, Pol. C. 1895;
re-en. Sec. 3051, Rev. C. 1907; re-en. Sec.
4818, R. C. M. 1921.

16-3005. (4818.1) Index of bonds in criminal cases to be kept. That clerks of the district courts of the counties in the state of Montana, shall hereafter keep proper books for indexing bonds given in criminal cases and all such bonds filed therein shall be entered showing the title and docket number of the case in which such bond is filed, the names of principals and sureties on such bonds in alphabetical order, the date and amount of the bond and upon its release, the date of the order or authority for such release.

History: En. Sec. 1, Ch. 47, L. 1923.

CHAPTER 31

COUNTY ATTORNEY

- Section 16-3101. Duties of county attorney.
16-3102. Legal adviser of board of county commissioners.
16-3103. Authority to sue to recover money illegally paid.
16-3104. Must not act as attorney for claims against his own county.
16-3105. Other duties.

16-3101. (4819) Duties of county attorney. The county attorney is the public prosecutor, and must:

1. Attend the district court and conduct, on behalf of the state, all prosecutions for public offenses and represent the state in all matters and proceedings to which it is a party, or in which it may be beneficially interested, at all times and in all places within the limits of his county;

2. Institute proceedings before magistrates for the arrest of persons charged with or reasonably suspected of public offenses, when he has information that such offenses have been committed, and for that purpose, whenever not otherwise officially engaged, must attend upon the magistrate in cases of arrest, and attend before and give advice to the grand jury, whenever cases are presented to them for their consideration;

3. Draw all indictments and informations, defend all suits brought against the state or his county, prosecute all recognizances forfeited in the courts of record, and all actions for the recovery of debts, fines, penalties, and forfeitures accruing to the state or his county;

4. Deliver receipts for money or property received in his official capacity, and file duplicates thereof with the county treasurer;

5. On the first Monday of January, April, July, and October, in each year, file with the county clerk an account, verified by his oath, of all moneys received by him in his official capacity during the preceding three months, and at the same time pay it over to the county treasurer;

6. Give when required, and without fee, his opinion in writing to the county, district, and township officers, on matters relating to the duties of their respective offices;

7. Keep a register of all official business, in which must be entered a note of every action, whether criminal or civil, prosecuted officially, and of the proceedings therein.

8. When ordered or directed by the attorney general so to do, to promptly institute and diligently prosecute in the proper court, and in the name of the state of Montana, any criminal or civil action or special proceeding, it being hereby declared that the supervisory powers granted to the attorney general by section 82-401(5), include the power to order and direct said county attorneys in all matters pertaining to the duties of their office.

History: En. Sec. 4450, Pol. C. 1895; amd. Sec. 1, p. 76, L. 1899; re-en. Sec. 3052, Rev. C. 1907; re-en. Sec. 4819, R. C. M. 1921; amd. Sec. 1, Ch. 187, L. 1935. Cal. Pol. C. Sec. 4256.

Cross-References

Abatement of public nuisance, secs. 94-1001 to 94-1011.

Abstracts of title to proposed city plats submitted to, sec. 11-607.

Advisor to cemetery associations, sec. 9-116.

Advisor to county welfare board, sec. 71-215.

Bastardy proceedings, prosecution, sec. 94-9905.

Bond, sec. 6-201.

Dams and reservoirs, duties, sec. 89-702.

Doors in public buildings, duties, sec. 69-2103.

Drug addicts, duties, secs. 66-1517 to 66-1520.

Firearms, use by children, prosecution, sec. 94-3580.

Food and drug act violations, prosecutions, sec. 27-116.

Gambling, prosecution, sec. 94-2415.

Grand jury attendance, sec. 94-6324.

Highway encroachments, prosecutions, secs. 32-1013, 32-1016.

Information, duty to file, secs. 94-4912, 94-6204.

Irrigation districts, duties, secs. 59-536, 89-2107.

Juvenile delinquent cases, sec. 10-629.

Livestock, branding, enforcement of law, sec. 94-3520.

Lotteries, duties, sec. 94-3008.

Obscene literature, destruction, sec. 94-3606.

Salary, sec. 25-607.

School bond proceedings, assistance, sec. 75-3923.

School officers, legal advisor, sec. 75-4708.

School trustees, prosecution, sec. 75-1832.

Tax recovery from assessor, sec. 84-446.

Undertaking to keep the peace, prosecution, sec. 94-5112.

Delegation of Powers Restricted

County attorney cannot delegate to unofficial counsel his right to advise the grand jury, assist them in their investigations and examine witnesses, and an order of the district judge appointing such special prosecutor when the county attorney was present and able to act could not give such authority. State ex rel. Porter v. District Court, 124 M 249, 220 P 2d 1035, 1051.

Operation and Effect

The county attorney, in his every duty, is under the supervisory powers of the attorney general; nor is there any official act to be discharged by him in the performance of which he may not, where public interests require it, be assisted by that official. State ex rel. Nolan v. District Court, 22 M 25, 30, 55 P 916.

Criminal cases arising under the state laws must be prosecuted in the name of the state and by the county attorney, under this section and the constitution. State ex rel. Streit v. Justice Court, 45 M 375, 380, 123 P 405.

Except when the county attorney is himself the accused, the duty devolves upon him to prosecute public offenses. State ex rel. McGrade v. District Court, 52 M 371, 373, 175 P 1157.

After a criminal case has been appealed to the supreme court, the duties of the county attorney therein and his power to contract expenses for the county cease. Independent Publishing Co. v. County of Lewis and Clark, 30 M 83, 85, 75 P 860.

References

Cited or applied as section 3052, Revised Codes, in State v. Barry, 45 M 582, 585, 124 P 774; State v. Vuckovich, 61 M 480, 491, 203 P 491; State Bank of Outlook v. Sheridan County, 72 M 1, 5, 230 P 1097; State ex rel. Juhl v. District Court, 107 M 309, 314, 84 P 2d 979.

Collateral References

District and Prosecuting Attorneys—8, 9.

27 C.J.S. District and Prosecuting Attorneys §§ 10, 14, 15.

42 Am. Jur. 233, Prosecuting Attorneys, generally.

Power of district, county, or prosecuting attorney to bring action of quo warranto. 153 ALR 899.

Duty and discretion of district or prosecuting attorney as regards prosecution for criminal offenses. 155 ALR 10.

16-3102. (4820) Legal advisor of board of county commissioners. The county attorney is the legal advisor of the board of county commissioners. He must attend their meetings when required, and must attend and oppose all claims and accounts against the county which are unjust or illegal.

History: En. Sec. 4451, Pol. C. 1895; re-en. Sec. 3053, Rev. C. 1907; re-en. Sec. 4820, R. C. M. 1921. Cal. Pol. C. Sec. 4257.

References

State Bank of Outlook v. Sheridan County, 72 M 1, 5, 230 P 1097; In re Hyde, 73 M 363, 366, 236 P 248.

16-3103. (4821) Authority to sue to recover money illegally paid. If the board of county commissioners, without authority of law, order any money paid as a salary, fees, or for any other purposes, and such money has been actually paid; or if any other county officer has drawn any warrant or warrants in his own favor, or in favor of any other person, without being authorized thereto by the board of county commissioners or by law, and the same has been paid, the county attorney is empowered, and it is his duty, to institute an action in the name of the county against such person or persons to recover the money so paid, and twenty-five per cent damages for the use thereof; and no order of the board of county commissioners therefor is necessary to maintain such suit; but when the money has not been paid on such order or warrants, it is the duty of the county attorney, upon receiving notice thereof, to commence an action in the name of the county for restraining the payment of the same, and no order of the board of county commissioners is necessary to maintain such action.

History: En. Sec. 4452, Pol. C. 1895; re-en. Sec. 3054, Rev. C. 1907; re-en. Sec. 4821, R. C. M. 1921.

ceedings for his summary removal may be instituted.

Operation and Effect

Under this section an action to recover county funds unlawfully paid must be brought by the county attorney in the name of the county, it being the real party in interest, and cannot therefore be maintained by a taxpayer. Gregg v. Bayers, 73 M 165, 166, 235 P 337.

Id. Where a county attorney fails or refuses to bring an action to recover county funds illegally paid out, he may be compelled to act by mandamus or pro-

Failure of a taxpayer to appeal to the district court from an order of the board of county commissioners allowing a claim against the county under the authority given him by section 16-1808, does not limit the right of the county attorney to sue in the name of the county to recover moneys illegally paid under this section. Carbon County v. Draper, 84 M 413, 417, 276 P 667.

Collateral References

Counties \S 217.
20 C.J.S. Counties \S 328.

16-3104. (4822) Must not act as attorney for claims against his own county. The county attorney, except for his own services, must not present any claim, account, or other demand for allowance against the county, nor in any way advocate the relief asked on the claim or demand made by another.

History: En. Sec. 4453, Pol. C. 1895; re-en. Sec. 3055, Rev. C. 1907; re-en. Sec. 4822, R. C. M. 1921. Cal. Pol. C. Sec. 4258.

References

State Bank of Outlook v. Sheridan County, 72 M 1, 5, 230 P 1097.

16-3105. (4823) Other duties. The county attorney must perform such other duties as are prescribed by law.

History: En. Sec. 4454, Pol. C. 1895; re-en. Sec. 3056, Rev. C. 1907; re-en. Sec. 4823, R. C. M. 1921.

References

Cited or applied as section 3056, Revised Codes, with preceding sections, in State ex rel. McGrade v. District Court, 52 M 371, 375, 157 P 1157.

CHAPTER 32

COUNTY AUDITOR

- Section 16-3201. Creation of office of county auditor.
 16-3202. Performance of duties heretofore performed by county auditors.
 16-3203. Election—term—qualifications.
 16-3204. Oath—bond.
 16-3205. Residence—salary.
 16-3206. May administer oath.
 16-3207. Must keep records.
 16-3208. Must audit and investigate claims.
 16-3209. Must record list of claims.
 16-3210. Must examine books and accounts.
 16-3211. County superintendent of poor.
 16-3212. Other duties.

16-3201. (4824) Creation of office of county auditor. The office of county auditor is hereby created and the same shall exist in all counties of the state of Montana of the first, second, third and fourth classes. Provided, however, that in counties of the 5th class where a county auditor has been elected he shall hold office until the expiration of his present term, but no longer.

History: En. Sec. 1, p. 227, L. 1891; re-en. Sec. 4560, Pol. C. 1895; re-en. Sec. 3100, Rev. 1907; re-en. Sec. 4824, R. C. M. 1921; amd. Sec. 1, Ch. 117, L. 1923.

NOTE.—For history of earlier acts, see State ex rel. McGinniss v. Dickinson, 26 M 391, 68 P 468.

Cross-References

County budgets, duties, sec. 16-1908.
 Market master, sec. 16-1138.

Failure of Commissioners to Provide Suitable Office Room

The acts of the county commissioners in furnishing the auditor as an office, an eight by twenty-two foot partitioned space, with no windows, insufficient ventilation, and but artificial lighting was an abuse of discretion and an arbitrary act. State ex rel. Taylor v. Board of County Comms., ___ M ___, 270 P 2d 994, 999. (Dissenting opinion, ___ M ___, 270 P 2d 994, 999.)

16-3202. (4824.1) Performance of duties heretofore performed by county auditors. That hereafter the duties heretofore performed by auditors in counties in which they shall have been elected, shall be performed by the same officers charged with the performance of those duties in counties below the fifth class.

History: En. Sec. 2, Ch. 117, L. 1923.

Operation and Effect

Under this section a county of the sixth class is not entitled to an auditor. Held, that where such a county entered into a contract with a public accountant for an audit of its books at a monthly compensation of \$150 for a period of several years, the contract is void for the reason that it nullified this section. Judith Basin Co. v. Livingston et al., 89 M 438, 446, 298 P 356.

References

Cited as section 1 of the act of March 7, 1891, in State ex rel. McGinniss v. Dickson, 26 M 391, 392, 68 P 468; Jones v. Cooney et al., 81 M 340, 263 P 429.

Collateral References

Counties—61.
 20 C.J.S. Counties § 100.

Collateral References

Counties—88.
 20 C.J.S. Counties § 139.

16-3203. (4825) Election—term—qualifications. There shall be elected in and for each county of the class named in the preceding section, at the general election to be held in November, 1892, and quadrennially thereafter, some male person to serve as county auditor of the county for which he shall be elected for the term of four years, and until his successor shall be elected and qualified, the term to begin on the first Monday in January succeeding his election. No person shall be eligible to the office of county auditor of any county within the state who shall not have arrived at the age of twenty-one years, and who shall not have been, for at least two years next preceding his election, a bona fide resident of the county for which he shall be elected or appointed.

History: En. Sec. 2, p. 227, L. 1891; re-en. Sec. 4561, Pol. C. 1895; re-en. Sec. 3101, Rev. C. 1907; re-en. Sec. 4825, R. C. M. 1921.

NOTE.—See art. XVI, secs. 5 and 6 of Constitution.

NOTE.—This section held in violation of section 6, article XVI of the Constitution which limits terms of office to two years for offices created by the legislature. Opinions of Attorney General Vol. 4, pg. 434.

Operation and Effect

Since the adoption of the suffrage

amendment to the constitution, a woman, otherwise qualified, is entitled to hold the office of county auditor. *Rose v. Sullivan*, 56 M 480, 185 P 562.

References

Cited or applied as section 2 of the act of March 7, 1891, in *State ex rel. McGinniss v. Dickinson*, 26 M 391, 393, 68 P 468.

Collateral References

Counties 62, 64.

20 C.J.S. Counties §§ 101, 102.

16-3204. (4826) Oath—bond. Any person who shall be elected or appointed to the office of county auditor shall, before entering upon the duties of said office, take and subscribe such an oath as is required of other county officers, and shall execute a bond to the county in which he shall have been elected or appointed, with at least two good and sufficient sureties, for the faithful discharge of the duties of his office; said bond shall be approved by the board of county commissioners of the county, which said bond, together with the oath of office, shall be filed with the county clerk and recorder of said county.

History: En. Sec. 3, p. 228, L. 1891; re-en. Sec. 4562, Pol. C. 1895; re-en. Sec. 3102, Rev. C. 1907; re-en. Sec. 4826, R. C. M. 1921.

NOTE.—The amount of the auditor's bond is fixed by section 6-201 at \$10,000 in counties of the first and second class and \$8,000 in counties of the third and fourth class.

16-3205. (4827) Residence—salary. The county auditor shall reside and keep his principal office at the county seat of the county for which he shall have been elected or appointed, and he shall receive the annual compensation provided by law, payable quarterly by warrants drawn on the treasury of the county treasurer, and shall receive no other compensation or emolument whatsoever for any service or services rendered or performed by him, except actual expenses for living and traveling whenever the duties of his office require his presence at any place in the county, other than the county seat, and then only after the same has been ordered and advised by the board of county commissioners.

History: En. Sec. 4, p. 228, L. 1891; re-en. Sec. 4563, Pol. C. 1895; re-en. Sec. 3103, Rev. C. 1907; re-en. Sec. 4827, R. C. M. 1921.

Collateral References

Counties 74(4).

20 C.J.S. Counties § 116.

16-3206. (4828) May administer oath. The county auditors are hereby authorized to administer any oath or affirmation rendered necessary to the performance of the duties of their respective offices, and shall have power to issue process and compel the attendance of witnesses before them and examine into any matter they may deem necessary, and any witness attending before such auditor shall receive the same fees and mileage as witnesses attending before justices of the peace in trial or examinations in criminal cases.

History: En. Sec. 5, p. 228, L. 1891; re-en. Sec. 4564, Pol. C. 1895; re-en. Sec. 3104, Rev. C. 1907; re-en. Sec. 4828, R. C. M. 1921.

References

Cited or applied as section 3104, Revised

Codes, in State ex rel. Dolan v. Major, 58 M 140, 152, 192 P 618.

Collateral References

Oath⇒2.

67 C.J.S. Oath § 5.

16-3207. (4829) Must keep records. The county auditor shall carefully preserve all documents, books, records, and other papers required to be kept in his office, and each county auditor on going out of office, shall deliver over to his successor in office all documents, books, records, and property in his hands belonging to the county.

History: En. Sec. 6, p. 229, L. 1891; re-en. Sec. 4565, Pol. C. 1895; re-en. Sec. 3105, Rev. C. 1907; re-en. Sec. 4829, R. C. M. 1921.

Collateral References

Counties⇒91.

20 C.J.S. Counties § 140.

16-3208. (4830) Must audit and investigate claims. It shall be the duty of persons holding claims against any county having a county auditor to present the same to the county auditor, whose duty it shall be to audit the same. The county auditor shall also investigate and examine into all claims presented to him, and report the same with his finding to the board of county commissioners at their regular session after such investigation shall have been completed, with his approval or disapproval indorsed thereon, and he shall keep a complete record of all such claims and of his investigations and examinations of the same in a book kept for that purpose. In all counties having a county auditor, all bills, claims, accounts, or charges for materials of any kind or nature that may be purchased by and on behalf of the county by any of the county officers, or contracted for by the county commissioners, shall be investigated, examined, and inspected by the county auditor, who shall indorse his approval or disapproval thereon before any warrant for the payment of the same can be drawn. In all counties having a county auditor, no claim against the county shall be paid or warrant drawn therefor unless the same shall have the approval of the county auditor; provided, however, that the judge of the district court of the county where any claim has been disapproved by the county auditor may order the payment of the same.

History: En. Sec. 7, p. 229, L. 1891; re-en. Sec. 4566, Pol. C. 1895; re-en. Sec. 3106, Rev. C. 1907; re-en. Sec. 4830, R. C. M. 1921.

Cross-Reference

Highways, local improvement claims, duties, sec. 32-524.

Operation and Effect

The word "audit" is not used in its narrow and restricted sense, and does not limit the auditor to merely ascertaining whether the claims are in proper form and mathematically correct. State ex rel. Dolin v. Major, 58 M 140, 152, 192 P 618.

Id. It would seem that the proviso empowering district judges to order the payment of claims against the county after the approval by the auditor, is repugnant to section 1 of article IV of the Constitution for the reason that it undertakes to cast upon district judges a power which pertains exclusively to the executive branch of the government.

Id. The board may exercise its judgment in ordering paid those claims which have the approval of the auditor, but the

only power which the board has in reference to claims disapproved by him is to disallow them.

References

State ex rel. Lockwood v. Tylers, 64 M 124, 134, 208 P 1081.

Collateral References

Counties 204(2).

20 C.J.S. Counties § 307.

16-3209. (4831) Must record list of claims. The county clerk and recorder shall return to the county auditor, within ten days after the adjournment of each session of the board of county commissioners, a list of the claims allowed or rejected either in whole or in part by them, which list shall be recorded by the auditor in a book kept for that purpose, and carefully preserved in his office.

History: En. Sec. 8, p. 230, L. 1891; re-en. Sec. 4567, Pol. C. 1895; re-en. Sec. 3107, Rev. C. 1907; re-en. Sec. 4831, R. C. M. 1921.

16-3210. (4832) Must examine books and accounts. It shall be the duty of the county auditor to make an examination of the books and accounts of the county treasurer, the county clerk and recorder, the sheriff, and clerk of the district court, and all other county and township officers, within fifteen days next preceding each regular session of the board of county commissioners at their next session immediately following such examination, unless a longer time be granted him by the board in which to report the same, and said report shall contain a full and complete statement of the moneys received and disbursed by each of the said officers since the last examination and report of the same, and for this purpose the county auditor shall have free access to all books and papers in each of said offices.

History: En. Sec. 9, p. 230, L. 1891; re-en. Sec. 4568, Pol. C. 1895; re-en. Sec. 3108, Rev. C. 1907; re-en. Sec. 4832, R. C. M. 1921.

References

Judith Basin Co. v. Livingston et al., 89 M 438, 446, 298 P 356.

Cross-Reference

School district books, examination, sec. 75-1831.

16-3211. (4833) County superintendent of poor. The county auditor hereby created is also made county superintendent of the poor, whose duty it shall be, under such rules and regulations as may be prescribed by the county commissioners, to care for and examine all claims that may be made upon the county for charity; also to have, under the direction of the county commissioners, general supervision of the county poorhouse or farm.

History: En. Sec. 10, p. 230, L. 1891; re-en. Sec. 4569, Pol. C. 1895; re-en. Sec. 3109, Rev. C. 1907; re-en. Sec. 4833, R. C. M. 1921.

for charity, he must do so under such rules and regulations as the commissioners may prescribe in their discretion. Jones v. Cooney et al., 81 M 340, 348, 263 P 429.

Operation and Effect

While the county auditor is made the superintendent of the poor under this section, who must care for and examine all claims that may be made upon the county

Collateral References

Social Security and Public Welfare 62. 70 C.J.S. Paupers § 11.

16-3212. (4834) Other duties. The county auditor shall also perform such other duties, clerical or otherwise, as he may be directed to perform by the county commissioners; provided, a reasonable amount of time must be allowed the county auditor for the performance of the duties definitely set forth in this act.

History: En. Sec. 11, p. 231, L. 1891; re-en. Sec. 4570, Pol. C. 1895; re-en. Sec. 3110, Rev. C. 1907; re-en. Sec. 4834, R. C. M. 1921.

References

Judith Basin Co. v. Livingston et al., 89 M 438, 446, 298 P 356.

CHAPTER 33

COUNTY SURVEYOR

- Section 16-3301. Qualifications of county surveyor and deputies.
 16-3302. County surveyor to work under direction of county commissioners—approval of commissioners required to contract indebtedness—duties of county surveyor.
 16-3303. Records of surveys and plats, etc.
 16-3304. Office and equipment to be furnished county surveyor.
 16-3305. County surveyor to make surveys, keep record of them, furnish copies, etc.
 16-3306. Surveys of lands in two counties.
 16-3307. Order for survey where title to lands in two counties disputed.
 16-3308. Courses to be run by true meridian—variation and date to be noted.
 16-3309. Surveyor to employ assistants, when.
 16-3310. Appointment of disinterested person when county surveyor interested in lands.
 16-3311. Must inspect road works.
 16-3312. Must not be interested in contracts.
 16-3313. Other surveyor may be employed.

16-3301. (4835) Qualifications of county surveyor and deputies. A county surveyor shall be a professional engineer, not less than twenty-two years of age, who shall have been in active practice of his profession for at least three years, and who shall have had responsible charge of work as principal or assistant for at least one year; graduation from a school of engineering shall be considered as equivalent to two years of active practice. All deputies must also have a practical knowledge of engineering.

History: En. Sec. 1, Ch. 50, L. 1919; re-en. Sec. 4835, R. C. M. 1921.

References

Hicks v. Stillwater County, 84 M 38, 42 et seq., 274 P 296.

NOTE.—This section held in violation of section 11, article IX of the Constitution as it imposes additional qualifications for one to hold the office of county surveyor than those required by the constitution. Opinions of Attorney General Vol. 16, No. 186.

Collateral References

Counties \S 64.
 20 C.J.S. Counties \S 102.

Constitutionality of statute regulating land surveyors. 55 ALR 307.

Cross-Reference

Bond, sec. 6-201.

16-3302. (4836) County surveyor to work under direction of county commissioners—approval of commissioners required to contract indebtedness—duties of county surveyor. The county surveyor shall work under the direction of the board of county commissioners, but shall have no power or authority to incur any indebtedness on the part of the county without the order or approval of the board of county commissioners being first obtained

therefor; he shall make all surveys, establish all grades, prepare plans, specifications, and estimates; he shall report any delinquency or inefficiency of any road overseer or other person employed upon the roads within his county; he shall, from time to time, make progress reports and estimates of all work, and such other facts in relation thereto as may be required by the state highway commission, board of county commissioners, or both.

History: En. Sec. 2, Ch. 50, L. 1919; amd. Sec. 1, Ch. 29, Ex. L. 1919; re-en. Sec. 4836, R. C. M. 1921.

Operation and Effect

Held, that in determining whether county commissioners must employ the county surveyor to construct drains for the preservation of highways, section 32-312, a special statute, declaring that the road supervisor or some other person designated by the board has authority to construct drains, must prevail over this section, requiring the county surveyor to make all surveys and establish all grades. *Durland v. Prickett et al.*, 98 M 399, 408, 39 P 2d 652.

County surveyor could not bind the county in ordering, receiving, charging and purchasing a deepfreeze. Although

the written order described the item as a counter shaft and pulley and the county paid the claim, the payment of the claim by the county did not ratify the actions of the county surveyor or make the transaction a legal sale of the freezer to the county. *State v. Bourdeau*, 126 M 266, 246 P 2d 1037, 1038.

References

Hicks v. Stillwater County, 84 M 38, 42 et seq., 274 P 296; *State v. Hale*, 126 M 326, 249 P 2d 495.

Collateral References

Counties↔85.

20 C.J.S. Counties § 137.

Liability of surveyor for defects in certificate or report. 34 ALR 77.

16-3303. (4837) **Records of surveys and plats, etc.** The county surveyor shall keep in his office a record of all surveys and plats made or caused to be made by him, to be recorded in proper books provided for that purpose; and shall also keep on file and for record, in suitable plat books provided therefor, copies of all plats made or caused to be made by him, and have recorded therein a description of every public highway within the county; provided, further, that all such books of record, together with original drawings and original book or books of field notes, calculations, and computations shall be, are, and shall remain the property of the county, and preserved as such.

History: En. Sec. 3, Ch. 50, L. 1919; re-en. Sec. 4837, R. C. M. 1921.

References

Vaught v. McClymond, 116 M 542, 556, 155 P 2d 612.

Collateral References

Counties↔92.

20 C.J.S. Counties § 144.

16-3304. (4838) **Office and equipment to be furnished county surveyor.** The county surveyor shall be provided with suitable office, together with necessary equipment, to perform his various duties as prescribed by law.

History: En. Sec. 4, Ch. 50, L. 1919; re-en. Sec. 4838, R. C. M. 1921.

Operation and Effect

Held that the complaint of a county surveyor in an action against the county to recover the reasonable value of the use of a transit employed by him in the performance of his duties during his term of office, with the knowledge and acquiescence of the county commissioners and for the benefit of the county stated a cause of action as upon an implied contract,

in view of the provisions of this section making it the duty of the county to furnish plaintiff with the necessary equipment for the proper discharge of his duties in making surveys, establishing grades, etc. *Hicks v. Stillwater County*, 84 M 38, 42 et seq., 274 P 296; *Builders Supply Co. v. City of Helena*, 116 M 368, 383, 154 P 2d 270.

Collateral References

Counties↔92.

20 C.J.S. Counties § 144.

16-3305. (4839) County surveyor to make surveys, keep record of them, furnish copies, etc. The county surveyor must make any survey that may be required by order of the court, or upon application of any person, keep a correct and fair record of all surveys made by him, number them in the order made, progressively, and preserve a copy of the field notes and calculations of each survey, indorse thereon its proper number, a copy of which, and a fair and accurate plat, together with the certificate of survey, must be furnished by him to any person upon payment of the fees allowed by law. He must also keep a correct and plain record of all surveys, made by him for the county or for individuals or corporations, which pertain to the public roads or bridges, in a book provided for that purpose by the county, which shall be transmitted to his successor in office.

History: En. Sec. 4470, Pol. C. 1895; re-en. Sec. 3057, Rev. C. 1907; re-en. Sec. 4839, R. C. M. 1921. Cal. Pol. C. Sec. 4268.

Cross-References

Abandoned beds in navigable streams and lakes, duties, secs. 81-2301 to 81-2304.

Common boundaries and corners of county, survey, sec. 16-106.

Highways, duties, secs. 32-302 to 32-304, 32-404, 32-405, 32-507 to 32-527.

Collateral References

Boundaries↔54(1).

11 C.J.S. Boundaries §§ 89, 90.

16-3306. (4840) Surveys of lands in two counties. Any person owning or claiming lands which are divided by county lines, and wishing to have the same surveyed, may apply to the surveyor of any county in which any part of such land is situated, and on such application being made, the county surveyor must make the survey, which is as valid as though the lands were situated entirely within the county.

History: En. Sec. 4471, Pol. C. 1895; re-en. Sec. 3058, Rev. C. 1907; re-en. Sec. 4840, R. C. M. 1921. Cal. Pol. C. Sec. 4269.

Collateral References

Boundaries↔54(1).

11 C.J.S. Boundaries § 89.

16-3307. (4841) Order for survey where title to lands in two counties disputed. When land, the title to which is in dispute before any court, is divided by a county line, the court making an order of survey may direct the order to the surveyor of any county in which any part of the land is situated.

History: En. Sec. 4472, Pol. C. 1895; re-en. Sec. 3059, Rev. C. 1907; re-en. Sec. 4841, R. C. M. 1921. Cal. Pol. C. Sec. 4270.

Collateral References

Boundaries↔54(1).

11 C.J.S. Boundaries § 90.

16-3308. (4842) Courses to be run by true meridian—variation and date to be noted. In all surveys the courses must be expressed according to the true meridian, and the variation of the magnetic meridian from the true meridian must be expressed on the plat, with the date of the survey.

History: En. Sec. 4473, Pol. C. 1895; re-en. Sec. 3060, Rev. C. 1907; re-en. Sec. 4842, R. C. M. 1921. Cal. Pol. C. Sec. 4271.

Collateral References

Boundaries↔54(2).

11 C.J.S. Boundaries §§ 89-91.

References

Vaught v. McClymond, 116 M 542, 556, 155 P 2d 612.

16-3309. (4843) Surveyor to employ assistants, when. If a party for whom the county survey is made does not furnish the chainmen and

markers, the surveyor may employ the necessary chainmen and markers, and receive the reasonable hire of all assistants necessarily employed.

History: En. Sec. 4474, Pol. C. 1895; re-en. Sec. 3061, Rev. C. 1907; re-en. Sec. 4843, R. C. M. 1921. Cal. Pol. C. Sec. 4272.

Collateral References
Counties↪63.
20 C.J.S. Counties § 101.

References

Hicks v. Stillwater County, 84 M 38, 42 et seq., 274 P 296.

16-3310. (4844) Appointment of disinterested person when county surveyor interested in lands. When the county surveyor is interested in any land, the title to which is in dispute and a survey thereof is necessary, the court must direct the survey to be made by some disinterested person, and the person so appointed is for the purpose authorized to administer and certify oaths. He must return such survey, verified by his affidavit annexed thereto, and receive for his services the same fees as the county surveyor would be entitled to for similar services.

History: En. Sec. 4475, Pol. C. 1895; re-en. Sec. 3062, Rev. C. 1907; re-en. Sec. 4844, R. C. M. 1921. Cal. Pol. C. Sec. 4275.

Collateral References
Boundaries↪54(1).
11 C.J.S. Boundaries § 91.

16-3311. (4845) Must inspect road works. The county surveyor shall also, at the direction of the county commissioners, direct and inspect the work and expenditures of the road supervisors; also furnish plans and specifications for road or bridge work, and he shall be chairman of all boards of road viewers.

History: En. Sec. 4476, Pol. C. 1895; re-en. Sec. 3063, Rev. C. 1907; re-en. Sec. 4845, R. C. M. 1921.

Collateral References
Counties↪92.
20 C.J.S. Counties § 144.

16-3312. (4846) Must not be interested in contracts. The county surveyor shall not be interested, directly or indirectly, in any contract for the construction or repair of roads or bridges under his charge, or in any claim or voucher for labor or material in connection with such repairs or construction.

History: En. Sec. 4477, Pol. C. 1895; re-en. Sec. 3064, Rev. C. 1907; re-en. Sec. 4846, R. C. M. 1921.

Relation as creditor of contracting party as constituting interest within statute against public officer being interested in public contract. 73 ALR 1352.

Collateral References

Highways↪113(3).
40 C.J.S. Highways § 208.
43 Am. Jur. 128, Public Officers, § 328.

Relationship as disqualifying interest within statute making it unlawful for an officer to be interested in a public contract. 74 ALR 792.

16-3313. (4847) Other surveyor may be employed. If the county surveyor neglect, refuse or be incompetent to perform the duties prescribed in section 16-3311 of this code, it shall be the duty of the board of county commissioners to employ another competent civil engineer, who shall be subject to the law governing the county surveyor.

History: En. Sec. 4478, Pol. C. 1895; re-en. Sec. 3065, Rev. C. 1907; re-en. Sec. 4847, R. C. M. 1921.

Collateral References
Counties↪63.
20 C.J.S. Counties § 101.

CHAPTER 34

COUNTY CORONER

- Section 16-3401. Coroner to hold inquest.
 16-3402. Coroner to bury body, when—expense of interment.
 16-3403. To deliver to county treasurer property, etc., found on body.
 16-3404. Statement before allowing accounts of coroner.
 16-3405. Justice of peace to act as coroner in certain cases.
 16-3406. Coroner to discharge duties of sheriff, when.
 16-3407. Must keep register.
 16-3408. Stenographers for coroners in counties having a population by the latest federal census of forty-five thousand (45,000) or more.
 16-3409. Inquest in case of prisoners in state prison.
 16-3410. Payment of costs of inquest.

16-3401. (4848) Coroner to hold inquest. The coroner must hold inquests, as provided in sections 94-201-1 to 94-201-12.

History: En. Sec. 4490, Pol. C. 1895; re-en. Sec. 3066, Rev. C. 1907; re-en. Sec. 4848, R. C. M. 1921. Cal. Pol. C. Sec. 4285.

Cross-References

Bonds, sec. 6-201.
 Coroner's inquest, secs. 94-201-1 to 94-201-13.
 Deaths from traffic accidents, duty to report, sec. 32-1207.

Fees, sec. 25-236.
 Not to practice law, sec. 93-2119.

Collateral References

Coroners—11.
 18 C.J.S. Coroners § 15.
 13 Am. Jur. 108, Coroners, §§ 6 et seq.
 When holding of inquest or autopsy justified. 48 ALR 1209.

16-3402. (4849) Coroner to bury body, when—expense of interment. When an inquest is held by the coroner, and no other person takes charge of the body of the deceased, he must cause it to be decently interred; and if there is not sufficient property belonging to the estate of the deceased to pay the necessary expenses of burial, the expenses are a legal charge against the county.

History: En. Sec. 4491, Pol. C. 1895; re-en. Sec. 3067, Rev. C. 1907; re-en. Sec. 4849, R. C. M. 1921. Cal. Pol. C. Sec. 4286.

Collateral References

Dead Bodies—3, 6.
 25 C.J.S. Dead Bodies §§ 3, 5, 7.

16-3403. (4850) To deliver to county treasurer property, etc., found on body. The coroner must, within thirty days after an inquest upon a dead body, deliver to the county treasurer or the legal representatives of the deceased any money or other property found upon the dead body.

History: En. Sec. 4492, Pol. C. 1895; re-en. Sec. 3068, Rev. C. 1907; re-en. Sec. 4850, R. C. M. 1921. Cal. Pol. C. Sec. 4287.

Collateral References

Coroners—20.
 18 C.J.S. Coroners § 25.

16-3404. (4851) Statement before allowing accounts of coroner. Before allowing the accounts of the coroner, the board of county commissioners must require him to file with the clerk of the board a statement in writing, verified by his affidavit, showing:

1. The amount of money or other property belonging to the estate of the deceased person, which has come into his possession since his last statement;
2. The disposition made of such property.

History: En. Sec. 4493, Pol. C. 1895; re-en. Sec. 3069, Rev. C. 1907; re-en. Sec. 4851, R. C. M. 1921. Cal. Pol. C. Sec. 4288.

16-3405. (4852) Justice of peace to act as coroner in certain cases. If the office of coroner is vacant, or he is absent or unable to attend, the duties of his office may be discharged by any justice of the peace of the county, with the like authority and subject to the same obligations and penalties as the coroner.

History: En. Sec. 4494, Pol. C. 1895;
re-en. Sec. 3070, Rev. C. 1907; re-en. Sec.
4852, R. C. M. 1921. Cal. Pol. C. Sec. 4289.

Collateral References
Coroners↪5.
18 C.J.S. Coroners § 11.

16-3406. (4853) Coroner to discharge duties of sheriff, when. In the cases specified in section 16-2720 of this code the coroner must discharge the duties of sheriff.

History: En. Sec. 4495, Pol. C. 1895;
re-en. Sec. 3071, Rev. C. 1907; re-en. Sec.
4853, R. C. M. 1921. Cal. Pol. C. Sec. 4290.

80 C.J.S. Sheriffs and Constables § 32.
47 Am. Jur. 844, Sheriffs, Police and
Constables, § 33.

Collateral References

Sheriffs and Constables↪25.

16-3407. (4854) Must keep register. It is the duty of the coroner of each county to keep an official register, to be labeled "Coroner's register," in which he must enter the date of holding all inquests, the name of the deceased, when known, and when not, such description of the deceased as may be sufficient for identification; property found on the person of the deceased, if any; what disposition of the same was made by the coroner; the cause of death, when known, and any other information which may pertain to the identity of the deceased.

History: En. Sec. 4496, Pol. C. 1895;
re-en. Sec. 3072, Rev. C. 1907; re-en. Sec.
4854, R. C. M. 1921.

Collateral References
Coroners↪8.
18 C.J.S. Coroners § 12.

16-3408. (4855) Stenographers for coroners in counties having a population by the latest federal census of forty-five thousand (45,000) or more. In each county having a population by the latest federal census enumeration of forty-five thousand (45,000) or more, the coroner may, with the consent of the county commissioners, appoint a stenographer, who shall hold such position during the pleasure of the coroner making the appointment, and who shall receive as salary a sum to be fixed by the board of county commissioners, to be paid monthly out of the contingent fund of the county upon the order of the board of county commissioners.

History: En. Sec. 1, Ch. 8, L. 1911; re-en. Sec. 4855, R. C. M. 1921; amd. Sec. 1, Ch. 233, L. 1947; amd. Sec. 1, Ch. 211, L. 1951.

Collateral References
Coroners↪4.
18 C.J.S. Coroners § 9.

16-3409. (4856) Inquest in case of prisoners in state prison. When a prisoner confined in the state prison shall die, the coroner of the county wherein the state prison is located may hold an inquest as provided in sections 94-201-1 to 94-201-12.

History: En. Sec. 1, Ch. 122, L. 1909;
re-en. Sec. 4856, R. C. M. 1921.

Collateral References
Coroners↪10.
16 C.J.S. Coroners § 14.

16-3410. (4857) Payment of costs of inquest. Whenever an inquest is held under the provisions of this act the county clerk of the county where

such inquest is had shall make out a statement of all the costs incurred by the county in such inquest, properly certified by the coroner of said county, which statement shall be sent to the board of state prison commissioners for their approval; and after such approval, said board must cause the amount of such costs to be paid out of the money appropriated for the support of the state prison to the county treasurer of the county where such inquest was had.

History: En. Sec. 2, Ch. 122, L. 1909;
re-en. Sec. 4857, R. C. M. 1921.

Collateral References

Coroners \hookrightarrow 21.
18 C.J.S. Coroners § 26.

CHAPTER 35

PUBLIC ADMINISTRATOR—REFERENCE TO LAW GOVERNING

Section 16-3501. Powers and duties of public administrator.

16-3501. (4858) Powers and duties of public administrator. The powers and duties of the public administrator are defined by sections 91-601 to 91-628.

History: New section recommended by code commissioner, 1921.

CHAPTER 36

CONSTABLE AND JUSTICES OF THE PEACE

- Section 16-3601. Constables to attend justices' courts.
16-3602. Bond of constable.
16-3603. Governed by the law prescribing sheriffs' duties.
16-3604. Duties of justices of the peace.
16-3605. Justices not to practice law.
16-3606. Commissioners to furnish justices of peace forms for criminal cases—quarters and equipment.

16-3601. (4859) Constables to attend justices' courts. Constables must attend the courts of justices of the peace within their townships whenever so required, and within their counties execute, serve, and return all process and notices directed or delivered to them by a justice of the peace of such county, or by any competent authority.

History: En. Sec. 4550, Pol. C. 1895;
re-en. Sec. 3096, Rev. C. 1907; re-en. Sec.
4859, R. C. M. 1921. Cal. Pol. C. Sec. 4314.

Collateral References

Sheriffs and Constables \hookrightarrow 87.
80 C.J.S. Sheriffs and Constables § 44.
47 Am. Jur. 839, Sheriffs, Police and
Constables, §§ 26 et seq.

Liability of public officer or his bond for the defaults and misfeasances of his clerks, assistants, or deputies. 1 ALR 222.

Liability of sheriff or other officer executing process of execution or attachment for failure to seize sufficient property. 93 ALR 316.

16-3602. (4860) Bond of constable. Every constable elected or appointed, after he has received his certificate of election or appointment, shall, before entering upon the duties of his office, be required to execute an undertaking to the state of Montana in the penal sum of two thousand dollars, with two sufficient sureties, and comply with the previous section as justices of the peace are required by law to do.

History: En. Sec. 2, p. 90, L. 1901;
re-en. Sec. 3097, Rev. C. 1907; re-en. Sec.
4860, R. C. M. 1921.

80 C.J.S. Sheriffs and Constables § 15.
47 Am. Jur., Sheriffs, Police, and Con-
stables, p. 829, § 13; p. 897, §§ 112 et seq.;
p. 914, §§ 133 et seq.

Collateral References

Sheriffs and Constables 10.

16-3603. (4861) Governed by the law prescribing sheriffs' duties. All the provisions of sections 16-2701 to 16-2722 inclusive of this code, except the fourth and sixth subdivisions of section 16-2702, apply to constables and govern their powers, duties and liabilities.

History: En. Sec. 4551, Pol. C. 1895;
re-en. Sec. 3098, Rev. C. 1907; re-en. Sec.
4861, R. C. M. 1921. Cal. Pol. C. Sec. 4315.

80 C.J.S. Sheriffs and Constables § 35.
47 Am. Jur. 839, Sheriffs, Police and
Constables, § § 26 et seq.

Collateral References

Sheriffs and Constables 77.

16-3604. (4862) Duties of justices of the peace. Justices of the peace must perform such duties as are prescribed in sections 93-6601 to 93-7714 of the code of civil procedure (Title 93), and such other duties as are prescribed by law.

History: En. Sec. 4552, Pol. C. 1895;
re-en. Sec. 3099, Rev. C. 1907; re-en. Sec.
4862, R. C. M. 1921. Cal. Pol. C. Sec. 4316.

Collateral References

Justices of the Peace 19-21.
51 C.J.S. Justices of the Peace § § 12-14.

16-3605. (4863) Justices not to practice law. No justice of the peace shall practice law, draw contracts, conveyances, or other legal instruments or documents, nor shall they take any claim or bill for collection, nor act as a collection agent in any sense whatever, nor shall they perform any legal duties other than those prescribed by law as their official duties in the conduct of cases and proceedings in their courts. Any justice of the peace violating any of the provisions in this section shall be deemed guilty of a malfeasance in office, and shall forthwith be removed from his office of justice of the peace, and shall thereafter be disqualified from holding such office.

History: En. Sec. 3, p. 92, L. 1901;
re-en. Sec. 3114, Rev. C. 1907; re-en. Sec.
4863, R. C. M. 1921.

Collateral References

Justices of the Peace 21.
51 C.J.S. Justices of the Peace § 14.

Cross-Reference

Justices of peace not to practice law in
justice's court, sec. 93-902.

16-3606. Commissioners to furnish justices of peace forms for criminal cases—quarters and equipment. The several boards of county commissioners shall furnish at the expense of their respective counties to all qualified and acting justices of the peace all necessary justice dockets, all blanks or forms required by the justices of the peace in the handling of criminal cases. In townships having a population of 1500 or more, according to the last previous United States census, the board of county commissioners may at their discretion, furnish such office quarters, furniture, fixtures and other supplies as they may deem necessary, provided, however, that the office quarters so furnished shall be located in the county court house, if possible.

History: En. Sec. 1, Ch. 75, L. 1937.

CHAPTER 37

DEPUTY COUNTY OFFICERS

- Section 16-3701. Number of deputies allowed.
 16-3702. Designation of chief deputy by county clerk.
 16-3703. Appointment of chief deputy assessor—other deputy assessors.
 16-3704. Extra deputies for county officers.
 16-3705. Qualifications of deputy sheriffs, marshals and policemen.
 16-3706. Maximum number of deputy treasurers, assessors, auditors and county attorneys.
 16-3707. Appointment of deputy county officers in seventh class counties.
 16-3708. Approval of compensation by county commissioners.

16-3701. (4875) Number of deputies allowed. The whole number of deputies allowed the county clerk in counties of the first and second classes must not exceed six; in counties of the third class, three; in counties of the fourth and fifth classes, two; in counties of the sixth and seventh classes, one. The whole number of deputies allowed the clerk of the district court in counties of the first and second classes must not exceed one chief deputy and deputies to the number of six; in counties of the third and fourth classes having more than one district judge, four; in counties of the third and fourth classes having one district judge, two; in counties of the fifth, sixth, seventh and eighth classes, one. The whole number of deputies allowed the sheriff is one undersheriff, and in addition not to exceed the following number of deputies: In counties of the first, second and third classes, six; in counties of the fourth class, two; in counties of the fifth, sixth, seventh and eighth classes, one. The sheriff in counties of the first, second and third classes may appoint two deputies, and in the fourth, fifth, sixth, seventh and eighth classes, one deputy who shall act as jailor and receive the same salary as other deputy sheriffs.

History: En. Sec. 1, Ch. 75, L. 1905; re-en. Sec. 3119, Rev. C. 1907; amd. Sec. 2, Ch. 93, L. 1909; re-en. Sec. 4875, R. C. M. 1921; amd. Sec. 1, Ch. 69, L. 1953.

Cross-Reference

Salaries of deputies, sec. 25-603.

Operation and Effect

The board of county commissioners has the power to determine, within the maximum limits prescribed by law, the number and compensation of deputies allowed by the sheriff. *Jobb v. County of Meagher*, 20 M 424, 431, 432, 51 P 1034; *Hogan v. Cascade County*, 36 M 183, 185, 92 P 529.

This section, prior to its amendment,

was held not to create a new class of deputies, or lodge in the sheriff exclusively the power of appointment without the consent or approval of the board of county commissioners, but simply to amount to an increase of the maximum number he may appoint, subject to the approval of the board. *Hogan v. Cascade County*, 36 M 183, 187, 92 P 529.

References

Cited or applied as section 4597, Political Code, before amendment, in *Jobb v. County of Meagher*, 20 M 424, 430, 51 P 1034; *Farrell v. Yellowstone County*, 68 M 313, 218 P 559.

16-3702. (4876) Designation of chief deputy by county clerk. The county clerk in counties of the first class may designate one of his deputy clerks as chief deputy clerk.

History: En. Sec. 1, Ch. 53, L. 1909; re-en. Sec. 4876, R. C. M. 1921.

Collateral References

Counties—82.
 20 C.J.S. Counties § 133.

16-3703. (4877) Appointment of chief deputy assessor—other deputy assessors. The assessor in counties of the first class may appoint one chief

deputy assessor, in lieu of the regular deputy as now provided by law; and such assessor may also appoint such other deputy assessors for the months of March, April, May, June, July, and August as now provided by law.

History: En. Sec. 2, Ch. 53, L. 1909; re-en. Sec. 4877, R. C. M. 1921.

Collateral References

Taxation—315.

84 C.J.S. Taxation § 373.

Cross-Reference

Assistants in assessment of taxes, sec. 84-443.

16-3704. (4878) Extra deputies for county officers. The board of county commissioners in each county is hereby authorized to allow the several county officers to appoint a greater number of deputies than the maximum number allowed by law when, in the judgment of the board of county commissioners, such greater number of deputies is needed for the faithful and prompt discharge of the duties of any county office, and to fix the salary of such deputies appointed in excess of the maximum allowed by law; provided, such salary shall not exceed the maximum salary of deputies provided by law.

History: En. Sec. 1, Ch. 178, L. 1907; re-en. Sec. 3123, Rev. C. 1907; re-en. Sec. 4878, R. C. M. 1921.

Operation and Effect

Under this section the board of county commissioners has power to fix the salaries of extra deputies or assistant county officers at any rate it may deem proper, provided the rate so fixed does not exceed the rate fixed for regular deputies. *Farrell v. Yellowstone County*, 68 M 313, 314 et seq., 218 P 559.

If the services the county commissioners seek to have done involve only an

investigation of county offices for abstracting purposes, that can be done by a regularly appointed deputy county officer; there is no statutory authority for the commissioners to employ anyone to perform such services on a commission basis. *Kelly v. Silver Bow County*, 125 M 272, 233 P 2d 1035, 1036.

References

Cited or applied in *State ex rel. Rusch v. Board of County Commrs.*, 121 M 162, 191 P 2d 670, 673.

16-3705. (4879) Qualifications of deputy sheriffs, marshals and policemen. No sheriff of a county, mayor of a city, or other persons authorized by law to appoint special deputies, marshals, or policemen in this state to preserve the public peace and prevent or quell public disturbance, shall hereafter appoint as such special deputies, marshals, or policemen any person who shall not have resided continuously in this state for a period of one year at least, and in the county where such appointment is made for the period of at least six months prior to the date of said appointment; provided, that the provisions of this section shall not apply in cases of such officers summoning a posse forthwith to quell public disturbance or domestic violence.

History: En. Sec. 4598, Pol. C. 1895; re-en. Sec. 3124, Rev. C. 1907; re-en. Sec. 4879, R. C. M. 1921.

Collateral References

Municipal Corporations—183(1¼), 184 (2); Sheriffs and Constables—22.

62 C.J.S. Municipal Corporations §§ 566, 571; 80 C.J.S. Sheriffs and Constables § 29.

16-3706. (4880) Maximum number of deputy treasurers, assessors, auditors and county attorneys. The whole number of deputies allowed the county treasurer must not exceed in counties of the first class, two; in counties of all other classes, one; provided, that the board of county commissioners may allow such additional deputies as may be necessary during

the months of November and December of each year. In counties of the first, second and third classes, assessors may be allowed one deputy, and during the months of March, April, May, June, July and August, not to exceed two additional deputies; in counties of all other classes assessors may be allowed one deputy during the months of March, April, May, June and July, provided that, under section one (1) hereof, the commissioners may allow the assessor in any class county a deputy for the month of January, if found to be necessary for the assessment of motor vehicles. The whole number of deputies allowed to county auditors in counties of the first, second and third classes must not exceed one. The whole number of deputies allowed the county attorney in counties of the first and second classes must not exceed one chief deputy, and one deputy; and in all other counties such deputies as may be allowed by the board of county commissioners, not to exceed one chief deputy and one deputy.

History: En. Sec. 2, Ch. 75, L. 1905; County of Meagher, 20 M 424, 435, 51 P re-en. Sec. 3128, Rev. C. 1907; re-en. Sec. 1034; Hogan v. Cascade County, 36 M 4880, R. C. M. 1921; amd. Sec. 1, Ch. 97, 183, 187, 92 P 529; State v. Crouch, 70 M L. 1939; amd. Sec. 2, Ch. 87, L. 1943. 551, 553, 554, 227 P 818.

References

Cited or applied as section 4602, Political Code, before amendment, in Jobb v.

16-3707. Appointment of deputy county officers in seventh class counties. That from and after sixty (60) days after the passage and approval of this act, there shall not be appointed in any county of the seventh class having less than 2,000 population, any deputy county officer or deputy designated by any county officer of such county, unless the appointment of such deputy, designating the term of service and compensation thereof, shall be first authorized by the board of county commissioners of such county.

History: En. Sec. 1, Ch. 168, L. 1941.

16-3708. Approval of compensation by county commissioners. The board of county commissioners shall not approve any compensation in payment for services of any person appointed by or acting under any elected or appointed officer of said county, after the termination of the month succeeding the end of sixty (60) days after the passage and approval of this act, whose appointment as herein provided shall not have been authorized and approved by the board of county commissioners of such county.

History: En. Sec. 2, Ch. 168, L. 1941.

CHAPTER 38

COUNTY CHARGES


- Section 16-3801. County charges to be audited.
 16-3802. Enumeration of county charges.
 16-3803. Costs on removal of criminal actions.
 16-3804. Proceedings in collection of such costs.

16-3801. (4951) County charges to be audited. Accounts for county charges of every description must be presented to the board of county com-

missioners to be audited as prescribed in sections 16-1013 and 16-1014 and in section 16-1802.

History: En. Sec. 4680, Pol. C. 1895; re-en. Sec. 3198, Rev. C. 1907; re-en. Sec. 4951, R. C. M. 1921; amd. Sec. 1, Ch. 19, L. 1935. Cal. Pol. C. Sec. 4343.

Collateral References

Counties  94(4).
20 C.J.S. Counties §§ 150, 152.

16-3802. (4952) **Enumeration of county charges.** The following are county charges:

1. Charges incurred against the county by virtue of any provision of this title.

2. One-half of the salary of the county attorney, and all expenses necessarily incurred by him in criminal cases arising within the county.

3. The salary and actual expenses for traveling when on official duty, and for the board of prisoners allowed by law to sheriffs, and the compensation allowed by law to constables for executing process on persons charged with criminal offenses.

4. The sums required by law to be paid to grand and trial jurors and witnesses in criminal cases.

5. The accounts of the coroner of the county for such services as are provided by law.

6. All charges and accounts for services rendered by any justice of the peace for services in the examination or trial of persons charged with crime as provided for by law.

7. The necessary expenses incurred in the support of county hospitals and poor-farms, and the indigent sick and the otherwise dependent poor whose support is chargeable to the county.

8. The contingent expenses necessarily incurred for the use and benefit of the county.

9. Every other sum directed by law to be raised for any county purpose under the direction of the board of county commissioners, or declared to be a county charge.

History: En. Sec. 4681, Pol. C. 1895; re-en. Sec. 3199, Rev. C. 1907; re-en. Sec. 4952, R. C. M. 1921. Cal. Pol. C. Sec. 4344.

Operation and Effect

This section restricts the liability of the county to such expenses as may be incurred under statutory authority directly conferred or necessarily implied from the powers granted to the county. *Sears v. Galatin County*, 20 M 462, 465, 52 P 204.

Expenses, not imposed by law, are not a charge against a county. *Wade v. Lewis and Clark County*, 24 M 335, 340, 61 P 879.

Under subdivision 3, all expenses necessarily incurred by a county attorney in prosecutions for public offenses arising in the county are a county charge. *Ind. Pub. Co. v. Lewis and Clark County*, 30 M 83, 85, 75 P 860.

A county attorney of a county of the third class had power to bind the county for services of a stenographer employed by the day if such services were neces-

sary to the proper discharge of the duties of his office; and in the absence of a showing that they were unnecessary, the district court properly directed the board of county commissioners to pay the claim, under this section, providing that contingent expenses necessarily incurred for the use and benefit of the county are county charges. *In re Hyde*, 73 M 363, 366, 236 P 248.

Id. That which the law does not impose as an expense upon a county is not properly chargeable to it.

Where a sheriff predicated his demand for reimbursement for expenses incurred by him for services performed beyond the state line upon his legal rights incident to his position as sheriff, and not upon a contract of employment by the county attorney at which direction he acted, and he did not show that he first obtained the consent of the board of county commissioners to absent himself from the state (sec. 16-2417), he was not entitled to recover on the theory that the claim was al-

lowable under authority of subdivision 2, this section, making the county chargeable with expenses necessarily incurred by the county attorney in criminal cases arising within the county. *Brannin v. Sweet Grass Co.*, 88 M 412, 419, 293 P 970.

16-3803. (4953) Costs on removal of criminal actions. When a criminal action is removed before trial, the costs accruing upon such removal and trial must be a charge against the county in which the indictment was found or information filed.

History: En. Sec. 4682, Pol. C. 1895; re-en. Sec. 3200, Rev. C. 1907; re-en. Sec. 4953, R. C. M. 1921. Cal. Pol. C. Sec. 4345.

Operation and Effect

Where a criminal action is removed from one county to another for trial, it is the duty of the county to which it is transferred to furnish a prosecuting officer, and if for any reason its county attorney is unable to act as such officer, and the court appoints special counsel to represent the state, the cost incident to

Collateral References

Counties⇒94(2).
20 C.J.S. Counties § 151.

his employment is not a proper charge against the county from which the change of venue was had. *State ex rel. Cascade Co. v. Lewis and Clark County*, 34 M 351, 355, 86 P 419.

References

Rosebud County v. Flinn, 109 M 537, 540, 98 P 2d 330.

Collateral References

Costs⇒306.
20 C.J.S. Costs § 441.

16-3804. (4954) Proceedings in collection of such costs. The district court of the county to which such action is removed must certify the amount of costs allowed and certified by the court to the board of county commissioners of their county, and such board of county commissioners shall audit the same and draw their warrants therefor upon the treasurer of the county from which such action was removed, and such board of county commissioners shall forward to said treasurer and board of county commissioners of the county from which said action was transferred, as aforesaid, a certified copy of the total amount allowed by the court, giving each item as certified to them by the clerk of the district court and the court; and the board of county commissioners receiving such certified copy of said costs allowed shall enter the same in their books as a charge against the treasurer of their county, and the county treasurer of the county from which such action was removed must immediately upon presentation pay said warrant out of the general fund of said county; or if, at the time of presentation, there is not sufficient moneys in the said general fund to pay the same, he must indorse upon said warrant, "Not paid for want of funds," and said warrant must be registered, and shall draw interest at the same rate and be paid in the same manner as though it had been drawn by the board of county commissioners of the county where the indictment was found or information filed.

History: En. Sec. 4683, Pol. C. 1895; re-en. Sec. 3201, Rev. C. 1907; re-en. Sec. 4954, R. C. M. 1921. Cal. Pol. C. Sec. 4346.

Operation and Effect

The mere certification of the costs resulting from the removal of a cause for trial from one county to another, required under this section, may not be said to have the force and effect of a judgment against the county from which the cause was removed, where no action was pend-

ing to which it was a party. *State v. Lewis and Clark County*, 34 M 351, 356, 86 P 419.

References

Rosebud County v. Flinn, 109 M 537, 543, 98 P 2d 330.

Collateral References

Costs⇒324.
20 C.J.S. Costs §§ 466, 480.

CHAPTER 39

COUNTY MANAGER FORM OF GOVERNMENT

- Section 16-3901. County manager plan of government may be adopted.
 16-3902. Method of adoption.
 16-3903. Powers vested in board of county commissioners.
 16-3904. Powers and duties of the county board.
 16-3905. County board not to interfere in appointments or removals.
 16-3906. Appointment of manager.
 16-3907. Appointment of subordinates.
 16-3908. Civil service provisions not affected by.
 16-3909. Removal of officers or employees.
 16-3910. Right to attend county board meetings.
 16-3911. Powers and duties of the county manager.
 16-3912. Administrative activities.
 16-3913. Compensation established by county board.
 16-3914. Advisory boards.
 16-3915. Preparation and submission of the budget.
 16-3916. Department of finance.
 16-3917. Department of public works.
 16-3918. Department of public welfare.
 16-3919. Officers to be appointed by manager—submission of budget.
 16-3920. Bonds of manager and director of finance.
 16-3921. Contract interest prohibited.
 16-3922. Reverting to former form of government authorized.
 16-3923. The recall of county commissioners.

16-3901. (4954.1) County manager plan of government may be adopted.

Any county in the state is hereby authorized to adopt a county manager form of government as herein defined, and in accordance with the procedure herein specified.

History: En. Sec. 1, Ch. 109, L. 1931.

Collateral References

Counties \Rightarrow 20.

20 C.J.S. Counties § 43.

37 Am. Jur. 685, Municipal Corporations,

§§ 72 et seq.

Commission and other modern forms of municipal government as affecting liability of municipality for torts. 30 ALR 473.

Constitutionality of city manager or commission form of municipal government. 67 ALR 737.

16-3902. (4954.2) Method of adoption. (a) Upon a petition filed with the board of county commissioners signed by not less than 20 per cent of the whole number of voters who voted at the last general election asking that a referendum be held on the question of adopting the county manager form of government, it shall be the duty of the board of county commissioners to submit the question at the next regular election or call a special election for the purpose. If a special election is called it shall be held not more than ninety days nor less than sixty days from the filing of the petition, but not within thirty days of any general election. The question submitted shall be worded: "Shall the county manager form of government be adopted in _____ county?"

(b) It shall be the duty of the board of county commissioners to publish a notice of the referendum in a daily paper twice a week for a period of three consecutive weeks, or in case there is no daily paper of wide circulation in the county, then in a weekly paper for four consecutive weeks.

(c) If a majority of the votes cast on the question at the election shall be in favor of the county manager form of government it shall go into effect at a date designated in the petition or resolution. Provided: That no elected official then in office, whose position will no longer be filled

by popular election, shall be retired prior to the expiration of his term of office, but that from and after the establishment of such form of government, his duties shall be such duties as are assigned to him by the county manager.

History: En. Sec. 2, Ch. 109, L. 1931;
amd. Sec. 1, Ch. 56, L. 1933.

16-3903. (4954.3) Powers vested in board of county commissioners. The powers of a county as a body politic and corporate shall be vested in a board of county commissioners and exercised in the manner provided in this act.

History: En. Sec. 3, Ch. 109, L. 1931.

16-3904. (4954.4) Powers and duties of the county board. (a) The board of county commissioners (hereinafter called the county board) shall be the policy-determining body of the county, and except as otherwise provided by law, shall be vested with all the powers of the county, including power to levy taxes and to appropriate funds.

(b) The county board is vested with full power to inquire into the official conduct of any officer or office under its control and to investigate the accounts, disbursements, bills and receipts of any county, district or township officer, and for these purposes may subpoena witnesses, administer oaths and require the production of books, papers and other evidence; and in case any witness fails or refuses to obey any such lawful order of the county board, he shall be deemed guilty of a misdemeanor.

(c) The county board shall have power to preserve order in its sessions and for this purpose may enforce obedience by fines not exceeding five dollars, or by imprisonment in the county jail for a period not exceeding twenty-four hours.

(d) The county board shall have power to put all officers of the county on a salary basis, and to require all fees to be accounted for and paid into the county treasury.

(e) Whenever in any county adopting this act it is not clear what officer provided for thereby or under the authority thereof should exercise any power or perform any duty conferred upon or required of the county, or any officer thereof, by general law, then any such power shall be exercised or duty performed by that officer of the county designated by ordinance or resolution of the county board.

History: En. Sec. 4, Ch. 109, L. 1931.

16-3905. (4954.5) County board not to interfere in appointments or removals. Neither the county board nor any of its committees or members shall direct or request the appointment of any person to, or his removal from, office by the county manager or any of his subordinates, or in any manner take part in the appointment or removal of officers or employees in the administrative service of the county. Except for the purpose of inquiry or in emergencies, the county board and its members shall deal with that portion of the administrative service over which the manager is responsible solely through the manager, and neither the county board nor any member thereof shall give orders to any subordinate of the county either publicly or privately. Any violation of the provisions of this section by a

member of the county board shall be a misdemeanor, conviction of which shall immediately result in the forfeiture of his office by the member so convicted.

History: En. Sec. 5, Ch. 109, L. 1931.

16-3906. (4954.6) Appointment of manager. (a) The county board shall appoint a county manager and fix his compensation. He shall be the administrative head of the county government, and shall devote his full time to this work. He shall be appointed with regard to merit only, and he need not be a resident of the county at the time of his appointment. No member of the county board shall, during the time for which elected, be chosen manager, nor shall the managerial powers be given to a person who at the same time is filling an elective office.

(b) The manager shall not be appointed for a definite tenure, but shall be removable at the pleasure of the county board. In case the county board determines to remove the manager, he shall be given, if he so demands, a written statement of the reasons alleged for the proposed removal and the right to a hearing thereon at a public meeting of the county board prior to the date on which his final removal shall take effect, but pending and during such hearing the county board may suspend him from office, provided that the period of suspension shall be limited to thirty days. The action of the board in suspending or removing the manager shall not be subject to review. In case of the absence or disability of the manager the county board may designate some responsible person to perform the duties of the office.

History: En. Sec. 6, Ch. 109, L. 1931.

16-3907. (4954.7) Appointment of subordinates. The manager shall be responsible to the county board for the proper administration of all the affairs of the county which the board has authority to control. To that end he shall appoint all officers and employees in the administrative service of the county, except as otherwise provided in this act, and except as he may authorize the head of a department or office responsible to him to appoint subordinates in such department or office. All appointments shall be on the basis of the ability, training and experience of the appointees which fit them for the work which they are to perform. All such appointments shall be without definite term unless for temporary service not to exceed sixty days.

History: En. Sec. 7, Ch. 109, L. 1931.

16-3908. (4954.8) Civil service provisions not affected by. Nothing in this act shall be construed to repeal or counteract existing civil service provisions of the state law.

History: En. Sec. 8, Ch. 109, L. 1931.

16-3909. (4954.9) Removal of officers or employees. Any officer or employee of the county appointed by the manager, or upon his authorization, may be laid off, suspended or removed from office or employment either by the manager, or the officer by whom appointed. Any director of a department or other officer who has been suspended or removed by the manager, within five days thereafter shall be given a written statement setting forth the reasons for dismissal, if he so requests. A copy of the written state-

ment giving reasons for dismissal, a copy of the written reply thereto by the officer involved, and a copy of the decision of the manager shall be filed as a public record in the office of the clerk to the county board.

History: En. Sec. 9, Ch. 109, L. 1931.

16-3910. (4954.10) Right to attend county board meetings. The manager, the directors of all departments, and all other officers of the county shall be entitled to be present at all sessions of the county board. The manager shall have the right to present his views on all matters coming before the county board and the directors and other officers shall be entitled to present their views relating to their respective departments or offices. This right shall apply to all officers of the county whether elective or appointive.

History: En. Sec. 10, Ch. 109, L. 1931.

16-3911. (4954.11) Powers and duties of the county manager. (a) As the administrative head of the county government for the county board, the manager shall supervise the collection of all revenues, guard adequately all expenditures, secure proper accounting for all funds, look after the physical property of the county, exercise general supervision over all county institutions and agencies, and, with the approval of the county board, coordinate the various activities of the county and unify the management of its affairs.

(b) He shall execute and enforce all resolutions and orders of the county board, and see that all laws of the state required to be enforced through the county board or other county officers subject to its control are faithfully executed.

(c) He shall attend all meetings of the county board and recommend such actions as he may deem expedient.

(d) He shall appoint all officers and employees in the administrative service of the county, except as otherwise provided in this act and except as he may delegate that power.

(e) He shall fix, with the approval of the county board, the compensation of all officers and employees whom he or a subordinate appoints.

(f) He may remove such officers, agents, and employees as he may appoint, and he shall report every appointment or removal to the next meeting of the county board.

(g) He shall prepare and submit the annual budget, and execute the budget in accordance with the resolutions and appropriations made by the county board.

(h) He shall make regular monthly reports to the county board in regard to matters of administration, and keep the board fully advised as to the financial condition of the county.

(i) He shall examine regularly the books and papers of every officer and department of the county and report to the county board the condition in which he finds them. He may order an audit of any office at any time.

(j) He shall perform such other duties as may be required of him by the county board.

History: En. Sec. 11, Ch. 109, L. 1931.

16-3912. (4954.12) **Administrative activities.** (a) The county manager shall be responsible to the county board for the administration of the following activities, unless otherwise authorized by the county board or directed by laws:

1. The assessment of property for taxation and the preparation of the tax roll;

2. The collection of taxes, license fees, and other revenues of the county and its subdivisions;

3. The custody and accounting of all public funds belonging to or handled by the county;

4. The purchase of all supplies for the county except those specifically excepted in this act;

5. The care of all county buildings;

6. The care and custody of all the personal property of the county;

7. The recording of deeds, mortgages and other instruments, and the entry and preservation of such other public records as the law requires;

8. The construction and maintenance of county highways and bridges;

9. The employment of prisoners;

10. The care of the poor; the operation of county charitable and correctional institutions, and the other welfare activities;

11. Public health work and the operation of the county hospitals;

12. Any or all matters of property and business in connection with the administration of schools and other governmental units within the county which shall be delegated to him by these units with the approval of the county board;

13. Such other activities of the county as are not specifically assigned to some other officers or agency by this act or by laws of the state subsequently enacted.

(b) These activities shall be distributed among the departments hereinafter described. There shall be a department of finance; a department of public works; a department of public welfare; and the county board may, upon recommendation of the county manager, establish additional departments. Any activity which is unassigned by this act shall be assigned by the county board to an appropriate department, and any activity so assigned may, upon the recommendation of the county manager, be transferred by the board to another department.

(c) The manager shall appoint a director for each department provided for or authorized by this section, and he may, with the consent of the county board, act as the director of one or more departments himself, or appoint one director for two or more departments. The subordinate officers and employees of each department shall be appointed or employed by the manager, unless he chooses to delegate this power in particular instances to subordinate officer.

History: En. Sec. 12, Ch. 109, L. 1931;
amd. Sec. 2, Ch. 56, L. 1933.

16-3913. (4954.13) **Compensation established by county board.** The county board shall establish a schedule of compensation for officers and employees which shall provide uniform compensation for like service, and such compensation shall be commensurate with and comparable to the com-

compensation for a like service in commercial business. Such schedule of compensation may establish a minimum and maximum for any class, and an increase in compensation, with the limits provided for by any class, may be granted at any time by the county manager or other appointing authority upon the basis of efficiency and seniority records. None of the provisions of the laws of this state with regard to the appointment or compensation of deputy county officers shall apply hereto.

History: En. Sec. 13, Ch. 109, L. 1931;
amd. Sec. 3, Ch. 56, L. 1933.

16-3914. (4954.14) Advisory boards. The manager may appoint a board of citizens qualified to act in an advisory capacity to the head of any specified department or office. The members of all such boards shall serve without compensation and it shall be their duty to consult and advise with the officer in charge of the office or department for which they are appointed but not to direct the conduct of such department or office.

History: En. Sec. 14, Ch. 109, L. 1931.

16-3915. (4954.15) Preparation and submission of the budget. On or before the 20th day of July of each year the manager shall prepare and submit to the county board a budget presenting a financial plan for conducting the affairs of the county for the ensuing year. The budget shall be set up in the manner prescribed by general statute and shall be published prior to the date of adoption by the county board.

History: En. Sec. 15, Ch. 109, L. 1931.

16-3916. (4954.16) Department of finance. (a) The director of finance shall have charge of the administration of the financial affairs of the county, including the budget; the assessment of property for taxation; the collection of taxes, license fees, and other revenues; the custody of all public funds belonging to or handled by the county; control over the expenditures of the county and its subdivisions; the disbursement of county funds; the purchase, storage and distribution of all supplies, materials, equipment, and contractual services needed by any department, office, or other using agency of the county; the keeping and supervision of all accounts; and such other duties as the county board may by ordinance or resolution require.

(b) No money shall be drawn from the treasury of the county, nor shall any obligation for the expenditure of money be incurred, except in pursuance of the annual appropriation ordinance or resolution, or legally enacted supplement thereto. Accounts shall be kept for each item of appropriation made by the county board. Each such account shall show in detail the appropriations made thereto, the amount drawn thereon, the unpaid obligations charged against it, and the unencumbered balance in the appropriation account, properly chargeable, sufficient to meet the obligation entailed by contract, agreement, or order.

(c) The director of finance shall either act as county assessor or shall appoint and have supervision over this official. The assessor and his deputies shall have the powers, qualify in the manner, and perform the duties prescribed by general law.

(d) The director of finance shall either act as tax collector and county treasurer or shall appoint and have supervision over these officials; provided, that in lieu of the election or appointment of a treasurer the county board

may select and designate annually, by ordinance or recorded resolution, some bank or banks or trust company as an official treasury for the funds of the county. All moneys received by any officer or employee of the county for or in connection with the business of the county shall be paid promptly into the hands of the county treasurer or the bank or trust company acting as county treasury. Any bank serving as a depository for county funds shall be subject to such requirements as to security therefor and interest thereon as prescribed by general statute. All interest on money so deposited shall accrue to the benefit of the county.

(e) The director of finance shall be charged with the keeping of all general books of financial and budgetary control for all departments and offices of the county. Report shall be made to him daily, or as often as he may require, showing the receipt of all moneys and disposition thereof. He shall submit to the county board through the manager each month a summary statement of revenues and expenses for the preceding month, detailed as to appropriations and funds in such manner as to show the exact financial condition of the county and of each department and division thereof. He shall submit once a year, or more often if the county board requires it, a complete financial statement showing the assets and liabilities of the county and of each of its subdivisions.

(f) The state examiner shall have the power and it shall be his duty to make at least one (1) examination each year of the books and accounts of any county which may have adopted and which is operating under the county-manager form of government, and to prescribe the necessary records and systems of accounting as provided in sections 82-1002 to 82-1010, inclusive, and the actions of the county commissioners and all other officers thereof shall be subject to the provisions of said sections, and such county shall pay the fee provided for in section 5-904.

(g) The director of finance shall either act as purchasing agent or shall appoint and have supervision over this official. The purchasing agent shall make all purchases for the county in the manner, and with such exceptions, as may be provided by resolution of the county board. He shall have authority to make transfers of supplies, materials and equipment between departments and offices, to sell any surplus supplies, materials, or equipment, and to make such other sales as may be authorized by the county board. He shall also have power, with the approval of the county board, to establish suitable specifications or standards for all supplies, materials and equipment to be purchased for the county, and to inspect all deliveries to determine their compliance with such specifications and standards. He shall have charge of such storerooms and warehouses of the county as the county board may provide.

Before making any purchase or sale, the purchasing agent shall invite competitive bidding under such rules and regulations as the county board may by ordinance or resolution establish. The purchasing agent shall not furnish any supplies, materials, equipment or contractual services to any department or office except upon receipt of properly approved requisition and unless there be an unencumbered appropriation balance sufficient to pay for the same.

History: En. Sec. 16, Ch. 109, L. 1931;
amd. Sec. 1, Ch. 72, L. 1943.

16-3917. (4954.17) Department of public works. The director of public works shall have charge of the construction and maintenance of county roads and bridges, county drains and all other public works; the construction and care of public buildings; store rooms and warehouses and such equipment and supplies as the county board may authorize; and shall perform such other duties as the county board may prescribe.

History: En. Sec. 17, Ch. 109, L. 1931;
amd. Sec. 4, Ch. 56, L. 1933.

16-3918. (4954.18) Department of public welfare. The director of public welfare shall have charge of poor relief, hospitals, charitable and correctional institutions, parks and playgrounds, and public health; and shall perform such other duties as the county board may prescribe.

History: En. Sec. 18, Ch. 109, L. 1931.

16-3919. (4954.19) Officers to be appointed by manager—submission of budget. All county officers, deputies and other employees, excepting the county attorney and the county commissioners, who are to be regularly elected, and the county manager, who is to be appointed by the county commissioners, shall come under the general provisions of this act and be appointed by the county manager as in this act provided; that such officers shall prepare, and submit an annual budget for their respective offices in the manner now required by law to the county manager, which shall be included in the budget required under section 16-3915, and that all claims for salaries and other expenses of these offices shall be audited and allowed or rejected in the same manner as other claims.

History: En. Sec. 19, Ch. 109, L. 1931;
amd. Sec. 5, Ch. 56, L. 1933.

16-3920. (4954.20) Bonds of manager and director of finance. The county manager shall give bond to the amount of not less than fifteen thousand dollars; the director of finance shall give bond to the amount of twenty-five thousand dollars; in case the county manager serves also as director of finance, he shall give bond to the full amounts indicated above. The county board shall have the power to fix bonds in excess of these amounts and to require bonds of other county officers in their discretion, conditioned on the faithful discharge of their duties and the proper accounting for all funds coming into their possession.

History: En. Sec. 20, Ch. 109, L. 1931;
amd. Sec. 6, Ch. 56, L. 1933.

16-3921. (4954.21) Contract interest prohibited. No member of the county board or other officer or employee of the county or person receiving a salary or compensation from funds appropriated by the county, shall be interested directly or indirectly in any contract to which the county is a party, either as principal, surety, or otherwise; nor shall any such officer or employee or his partner, agent, servant or employee or the firm of which he is a member purchase from or sell to the county, any real or personal property, nor shall he be interested, directly or indirectly, in any work or service to be performed for the county or in its behalf. Any contract made in violation of any of these provisions shall be void.

History: En. Sec. 21, Ch. 109, L. 1931.

16-3922. (4954.22) Reverting to former form of government authorized. Provided that any county operating under the managerial form of government herein created may revert to the former form of government by petition and the same procedure as outlined in section 16-3902.

History: En. Sec. 22, Ch. 109, L. 1931.

16-3923. (4954.23) The recall of county commissioners. (1) One or more county commissioners may be removed by the electors qualified to vote for a successor of such incumbent. A petition of fifty-one per cent of all qualified electors registered for the last general election, demanding the election of a successor to the person sought to be removed, shall be filed with the director of finance of the county, which petition shall contain a general statement of the grounds for which the removal is sought. The signatures to the petition need not be appended to one paper, but each signer shall add to his signature, his place of residence; one of the signers shall make oath before an officer, competent to administer oaths, that the statements therein are true, as he believes and that each signature to the paper appended is the genuine signature of the person it purports to be.

(2) On the filing of a sufficient petition, the director of finance shall order and fix a date for holding said election, not less than seventy days nor more than eighty days from the date of filing of such petition. The director of finance shall cause to be made publication of notice and all arrangements for holding of such election and the same shall be conducted and returned and the results thereof declared, in all respects and in the same manner as any other election. Nominations hereunder shall be made by filing with the director of finance, at least thirty days prior to such special election, a statement of candidacy, accompanied by a petition signed by electors entitled to vote at such special election, equal in number to at least ten per cent of the entire number of persons registered to vote at the last preceding general election.

(3) The ballot for such special election shall be in substantially the following form:

"OFFICIAL BALLOT

Special election for the balance of the unexpired term of
..... for

(Vote for one only)

(Name of candidate)

(Name of present incumbent)

(Official ballot attest)

Signature.....

Director of finance."

The successor of any officer so removed shall hold office during the unexpired term of his predecessor.

(4) Any person sought to be removed may be a candidate to succeed himself and unless he requests otherwise in writing, the director of finance shall place his name on the official ballot without nomination. In case of any such removal election, the candidate or candidates receiving the highest number of votes shall be declared elected. If the incumbent is not re-elected, he thereupon shall be deemed removed from the office, upon the qualification of his successor. If the incumbent receives the highest num-

ber of votes, or in case of a removal election for more than one commissioner, he or they receiving a sufficient number of votes so that his or their vote is the highest number for said office or offices of commissioner, he or they shall continue in office. The said method of removal shall be cumulative and additional to the methods herein provided by law.

History: En. Sec. 7, Ch. 56, L. 1933.

CHAPTER 40

ABANDONMENT OF COUNTIES

- Section 16-4001. Abandonment of counties—how.
 16-4002. Petition for abandonment of counties—procedure thereon.
 16-4003. County commissioners to order election—notice—publication.
 16-4004. Commissioners to determine sufficiency of petition—form of resolution.
 16-4005. Governor to call special election—proclamation.
 16-4006. County commissioners to proclaim election—question submitted.
 16-4007. Question to be submitted.
 16-4008. Commissioners to canvass returns—governor to proclaim result.
 16-4009. Result of election determines abandonment.
 16-4010. Townships—how disposed of, term of justices and constables.
 16-4011. Property of abandoned county—disposal.
 16-4012. Vesting of property and rights.
 16-4013. Removal of records.
 16-4014. Contracts of abandoned county—printing contracts.
 16-4015. Claims and demands against abandoned county.
 16-4016. Funds how transferred and used—bonds—tax levy.
 16-4017. Disposition of moneys of abandoned district.
 16-4018. Tax liability—property in abandoned county—special warrant districts.
 16-4019. Assessment of property.
 16-4020. Disposal of property—leasing—sale.
 16-4021. Intention of act as to indebtedness of abandoned county.
 16-4022. Effect on school districts.
 16-4023. County high schools, effect of abandonment of county on.

16-4001. Abandonment of counties—how. The organization and corporate existence of any county organized under the laws of this state may be abandoned and abolished and the territory within its boundaries attached to and made a part of some adjoining county in the manner provided by this act.

History: En. Sec. 1, Ch. 105, L. 1937.

Collateral References

Counties[Ⓒ]11.
 20 C.J.S. Counties § 23.

16-4002. Petition for abandonment of counties—procedure thereon.
 (1) A petition may be filed with the county clerk of a county, asking that the question of abandoning and abolishing the organization and corporate existence of such county and attaching its territory to and making the same a part of some adjoining county, be submitted to the qualified electors of such county at an election. Such petition shall state the name of the adjoining county to which the territory of such county, so to be abandoned and abolished, shall be attached and made a part; such petition shall be signed by not less than thirty-five per centum (35%) of the qualified electors of the county whose names appear upon the registration records of such county, shall contain the post office address and voting precinct of each person signing the same, and shall state the name and address of three persons

to whom notice of the insufficiency of the petition shall be sent in the event that the petition shall not have the required number of signatures of qualified electors signed thereto.

(2) It shall be the duty of the county clerk, within thirty days after the filing of such petition to examine the same, to ascertain and determine from the registration records of the county whether such petition is signed by the required number of qualified electors. Such clerk may be authorized by the board of county commissioners to employ additional help in his office to assist him in the work of examining such petition and such board shall provide for their compensation. When such examination is completed said clerk shall forthwith attach to such petition his certificate, properly dated and signed, showing the result of his examination, and if said certificate shows that said petition is signed by the required number of qualified electors, said clerk shall immediately present said petition to the board of county commissioners, if such board be then in session, otherwise at its first regular meeting after the date of such certificate. No person, after signing any such petition shall be allowed or permitted to withdraw his signature or name therefrom.

History: En. Sec. 2, Ch. 105, L. 1937.

20 C.J.S. Counties § 29.

Collateral References

14 Am. Jur. 189, Counties, § 8.

Counties⇒14.

16-4003. County commissioners to order election—notice—publication.

(1) Whenever any such petition is presented to the board of county commissioners of a county with a certificate of the county clerk attached thereto, showing that said petition has been signed by not less than thirty-five per centum (35%) of the qualified electors of such county whose names appear upon the registration records of said county, as provided in section 16-4002, said board of county commissioners shall immediately upon presentation of such petition, make and enter an order in its minutes fixing a day for considering and taking final action on said petition, which shall be not less than thirty (30) nor more than thirty-five (35) days after the date when said order is made, and shall cause a notice to be published in the official newspaper of the county to the effect that such petition has been presented to such board asking for the abandonment and abolishment of the county and that said board will meet at the time specified in said order for considering and taking final action on said petition, at which time any and all registered electors of the county interested therein may appear and be heard thereon. Such notice shall be published once a week for two (2) successive weeks immediately following the making of such order.

(2) At any time prior to five (5) days before the date fixed for consideration and final action on such petition fifty per centum (50%) of the registered electors residing within a particular part or portion of such county, may file with the county clerk of such county a petition in writing signed by them praying that the part or portion of such county within which such petitioners reside shall not be attached to the county designated in the petition for abandonment but shall be attached to some other adjoining county, which petition shall definitely, particularly and accurately describe the boundaries of such part or portion of said county which said petitioners desire to be attached to such other adjoining county and shall specify and

name such other adjoining county to which such part or portion is to be attached if said county is abandoned and abolished.

(3) Whenever any such petition is filed the county clerk shall immediately examine the same and determine from the registration records of the county whether such petition has been signed by the required number of registered electors and shall attach thereto his certificate showing the total number of registered electors residing within the boundaries described in said petition and the number thereof whose names appear on said petition, and shall deliver such petition with such certificate attached, to the board of county commissioners when such board meets to consider and take final action on such petition for abandonment, separate and independent petitions may be filed by registered electors residing within the boundaries of separate and distinct and different parts or portions of such county, praying that the territory embraced within the boundaries described therein may be attached to and become parts of the same, or different adjoining counties, other than the county named and designated in the petition for abandonment, if said county is abandoned. No person after signing any such petition shall be allowed or permitted to withdraw his signature or name therefrom.

History: En. Sec. 3, Ch. 105, L. 1937.

16-4004. Commissioners to determine sufficiency of petition—form of resolution. On the day fixed by the board for consideration and final action on such petition for abandonment the board shall meet and examine and consider all petitions which may have been filed praying that particular parts or portions of said county, if abandoned, be attached to an adjoining county or counties, other than the county named in such petition for abandonment, and shall determine the sufficiency of each such petition filed, and shall enter its findings with regard thereto in its minutes, and said board shall thereupon adopt a resolution, which shall be in writing and also entered in full in its minutes, and which shall be in substantially the following form:

Whereas, there has been filed with the clerk of (name) county, Montana, a petition asking that the organization and corporate existence of said county be abandoned and abolished and its territory attached to and made a part of an adjoining county, to wit, the county of (name), Montana;

And whereas, said petition has been presented to the board of county commissioners of (name) county, with a certificate of the clerk of said county attached thereto showing that said petition has been signed by not less than thirty-five per centum (35%) of the registered electors of said county;

(If any petition for attaching any part or portion of the county, in case of abandonment to an adjoining county or counties, other than the county named in the petition for abandonment, and found to have been signed by the required number of registered electors, insert the following for each petition)

And whereas, there has been filed a petition signed by not less than fifty per centum (50%) of the registered electors residing within that part or portion of said county described as (give description as contained in petition) praying that the part or portion of said county within such bound-

aries be attached to and made a part of the county of (name of county given in petition) if said county be abandoned;

Now therefore be it resolved, that if said (name) county shall be abandoned and abolished the territory embraced within its boundaries shall be attached to and become part of the following. (If all to be attached to one adjoining county so state, but if parts or portions to any other county or counties, then describe the part or portion to go to each adjoining county as well as to the county named in the petition for abandonment.)

And be it further resolved, that the county clerk of (name) county, Montana, make copies of this resolution, each with a copy of said petition for abandonment, with the signatures omitted therefrom (and copies of petitions for attaching parts or portions of said county to adjoining county or counties, other than the county named in the petition for abandonment, if any were filed and found sufficient, with signatures omitted) and certify to the same and affix the seal of the county thereto, and transmit one of said copies to the governor of the state of Montana, and one of said copies to the clerk of each county to which any part of said county is to be attached, if abandoned.

Said resolution must be signed by the members of the board of county commissioners and the county clerk must, within five (5) days thereafter, make the certified copies of said resolution, with copy of petition or petitions attached, and transmit one copy to the governor of the state of Montana and one copy to the county clerk of each county to which any part or portion of said county is to be attached, if abandoned.

History: En. Sec. 4, Ch. 105, L. 1937.

16-4005. Governor to call special election—proclamation. Upon receipt of a certified copy of the resolution provided for in section 16-4004, the governor shall, within ten days thereafter, issue his proclamation calling a special election in the county in which the petition referred to in said resolution was filed, and in each county designated in such resolution as a county to which any of the territory of such county, if abandoned and abolished, shall be attached and made a part, at which election there shall be submitted to the qualified electors of the county in which such petition was filed the question of whether or not such county shall be abandoned and abolished and its territory attached to and made a part of the county designated and named for such purpose in said petition, and at which election there shall be submitted to the qualified electors of each county named and designated in such resolution as a county to which a part of the territory of the county, proposed to be abandoned and abolished, shall be attached and made a part, if such county shall be so abandoned and abolished, the question of whether or not such part of the territory of such county, if abandoned and abolished, described in such resolution, shall be attached to and become a part of such county. Such proclamation shall fix a day for holding such election in such counties, which shall be not less than ninety days nor more than one hundred and twenty days after the date of the date of the governor's proclamation calling the same; provided that if a general election will be held in said counties within one hundred and twenty days after the date of such proclamation, the governor, in such proclamation, shall direct that such question be submitted to the

qualified electors of said counties at such general election. Such proclamation shall be filed in the office of the secretary of state and copies thereof shall be transmitted by the governor to the county clerk of each of the counties in which such election is to be held.

History: En. Sec. 5, Ch. 105, L. 1937.

16-4006. County commissioners to proclaim election—question submitted. The county clerk of each of such counties after receiving a copy of such election proclamation shall present the same to the board of county commissioners, if such board is then in session, and if not in session, then at the first meeting thereof held after such clerk has received the same, and the board of county commissioners of each of such counties shall issue such proclamations and give such notices of election as are required by the general laws of this state when questions are to be submitted to the qualified electors of a county at an election and which proclamation and notices shall include a description of the boundaries of that part of the county proposed to be abandoned and to be attached to and made a part of such county, if said county be abandoned, and the county clerk of each of such counties shall give notice of the closing of the registration books and shall cause the same to be closed at the time and in the manner provided by the general registration and election laws of this state.

History: En. Sec. 6, Ch. 105, L. 1937.

16-4007. Question to be submitted. At such election the question to be submitted to the qualified electors of the county in which said petition was filed shall be as follows:

☐ For the abandonment and abolishment of the county of (name) and attaching the territory within its boundaries to and making the same a part of the county or counties of (name).

☐ Against the abandonment and abolishment of the county of (name) and attaching the territory within its boundaries to and making the same a part of the county or counties of (name).

And the question to be submitted to the qualified electors of the counties, designated in the resolution as the county or counties to which the territory of the county proposed to be abandoned and abolished, is to be attached and made a part, shall be as follows:

☐ For attaching to and making a part of the county of (name) a part of the territory within the boundaries of the county of (name) if the same is abandoned and abolished.

☐ Against attaching to and making a part of the county of (name) a part of the territory within the boundaries of the county of (name) if the same is abandoned and abolished.

Said election shall be held, voted, counted and returns made and canvassed in the manner provided by the general election laws of this state.

History: En. Sec. 7, Ch. 105, L. 1937.

16-4008. Commissioners to canvass returns—governor to proclaim result. The board of county commissioners of each county, acting as a canvassing board, must within ten (10) days after the holding of such election canvass the returns of such election, and within five (5) days thereafter the clerk of each such county must make and enter in the records of said board


a statement of the vote in such county and transmit to the secretary of state, by registered mail, an abstract thereof, which shall be marked "Election Returns." Within ten (10) days after receiving such abstracts from all counties in which such election was held, and on notice from the secretary of state, the board of state canvassers shall meet and canvass, compute and determine the vote, and the secretary of state, as secretary of such board must make and file in his office a statement thereof and transmit a copy thereof to the governor. Upon receipt of such copy the governor shall issue a proclamation declaring the result of such election and shall file a copy of such proclamation in the office of the secretary of state and transmit a copy of such proclamation to the county clerk of each of the counties in which such election was held, and each such county clerk shall file the same in his office and present the same to the board of county commissioners of his county, if such board is then in session, otherwise at the first meeting of the board after the same has been received by such clerk.

History: En. Sec. 8, Ch. 105, L. 1937.

16-4009. Result of election determines abandonment. If, at such election a majority of the votes cast in the county in which such petition was filed shall be cast in favor of the abandonment and abolishment of such county, and a majority of the votes cast in the county, designated in the petition for abandonment as the county to which the territory of the abandoned county shall be attached, shall be in favor thereof, then the organization and political and corporate existence of the county in which such petition for abandonment was filed shall cease and terminate and said county shall be abandoned and abolished and disincorporated and cease to exist and its territory shall be attached to and become a part of the counties designated in the resolution adopted under section 16-4004, and the term of office of each of the officers thereof, and of the members of the board of county commissioners thereof, and of its senator and representative in the legislative assembly shall cease and terminate at twelve (12:00) o'clock midnight on the thirtieth day of June immediately following; provided that if at any such election a majority of the votes cast in any adjoining county named in the resolution adopted under section 16-4004, other than the county designated in the petition for abandonment as the county to which the territory of the abandoned county shall attach, shall be against the attaching of any portion of the territory of the abandoned county to such adjoining county, then such portion of such territory described in said resolution shall be attached and become a part of the county designated in such resolution for abandonment as the county to which the territory of the abandoned county shall attach.

History: En. Sec. 9, Ch. 105, L. 1937.

Collateral References

Counties  15.

20 C.J.S. Counties § 30.

16-4010. Townships—how disposed of, term of justices and constables. The townships of a county abandoned and abolished under this act shall be townships of the county to which the territory within such townships is attached until such time as they may be changed by the board of county commissioners of such county and the justices of the peace and constables in such townships shall continue to hold such offices for the terms for which

they were elected; provided that if a township of such abandoned county is divided and a part attached to one and a part attached to another adjoining county then the board of county commissioners of the county to which attached, until further order of such board, shall attach such territory to an adjoining township within such county, and the terms of office of the justices of the peace and constables within such divided township shall cease and terminate at twelve (12:00) o'clock midnight of the thirtieth day of June immediately following.

History: En. Sec. 10, Ch. 105, L. 1937.

16-4011. Property of abandoned county—disposal. Each county to which any part of the territory of an abandoned county is attached and made a part shall succeed to, have, possess and own all real estate, and all improvements thereon, and all tangible property and all county highways situated within the territory of the abandoned county attached to such county, and all certificates of tax sale to lands and improvements thereon situated within such territory, and shall have the same right and power to sell and assign such certificates as to apply for and obtain tax deeds to such lands and improvements, and to sell and dispose of the same as were or would have been possessed by the abandoned county if it had not been abandoned.

History: En. Sec. 11, Ch. 105, L. 1937.

16-4012. Vesting of property and rights. The county designated in the petition for the abandonment of a county as the county to which the territory of the abandoned county shall be attached, subject to the provisions of this act, shall succeed to, have, possess and own all other property, assets, liens, right, remedies and claims of every kind owned and belonging to or possessed by the abandoned county on the date when the same ceases to exist, and shall have the right to demand, collect and receive any and all moneys to which such abandoned county was entitled for taxes for which tax sales had not been held, licenses and other demands remaining unpaid on the date when such abandoned county ceased to exist and to enforce in any manner authorized by law any and all of such rights, remedies and claims.

History: En. Sec. 12, Ch. 105, L. 1937.

16-4013. Removal of records. All maps, plats, papers, documents, records, record books, indexes and files of every kind and description belonging to an abandoned and abolished county, or in the possession of any of the officers thereof, on the date when such county ceases to exist, shall be, immediately after such county ceases to exist, removed to the county seat of the county designated in the petition for abandonment as the county to which the territory of the abandoned and abolished county is to be attached, and the same shall be delivered over to the custody of the proper officers of such county and be placed in the proper offices thereof, and shall thereafter constitute the maps, plats, papers, documents, records, record books, indexes and files of such county, and the cost and expense of such transfer and removal shall be paid by warrants ordered drawn and issued by the board of county commissioners of such county against the general fund of such abandoned and abolished county.

If any part of an abandoned county shall be attached to and become a part of any adjoining county, other than the county designated in the petition for abandonment, it shall be the duty of the board of county commissioners of the county designated in said petition for abandonment, to enter into a contract with some competent person or persons for transcribing so much of the records of said abandoned county as affects or relates to the property in that portion of the abandoned county which has been attached to such other county, and to prepare complete and proper indexes for such transcribed records, and when completed to transmit such transcribed records and indexes to such other county; provided, that if portions of such abandoned county have been attached to more than one adjoining county, the board of county commissioners may enter into separate contracts for transcribing the records for each of such other counties or may enter into one contract for transcribing the records for all of such other counties; provided that chattel mortgages, mechanic and other liens, and other instruments filed, but not recorded, shall not be transcribed, but the original instruments shall be transmitted to such other county or counties. The cost of transcribing, indexing and transmitting such records shall be paid by warrants drawn by the board of county commissioners letting such contracts on the general fund of the abandoned county. All of the provisions of sections 16-605, 16-606 and 16-607, shall apply to such transcribed records.

History: En. Sec. 13, Ch. 105, L. 1937.

Collateral References

Counties ~~§~~ 16(1), 113(4).

20 C.J.S. Counties §§ 35, 179.

16-4014. Contracts of abandoned county—printing contracts. All valid and existing contracts entered into by a county abandoned and abolished under this act, and which, by the terms thereof, will extend beyond the time when such county ceases to exist, shall continue in full force and effect as contracts of the county designated in the petition for abandonment as the county to which the territory of the abandoned and abolished county is attached and made a part; provided that if the abandoned and abolished county shall have theretofore entered into a printing contract in accordance with the provisions of sections 4482 to 4482.2, inclusive, Revised Codes, 1935, or acts amendatory or supplemental thereto, and such contract shall be in full force and effect on the date when such county ceases to exist, all supplies and printing for the county designated in the petition for abandonment as the county to which the territory of the abandoned and abolished county is attached and made a part shall be, by the board of county commissioners of such county divided between such contract and any similar existing contract entered into by the board of county commissioners of such county in such manner as such board of county commissioners shall deem equitable and just to the holders of both such contracts until the contract entered into by the abandoned and abolished county shall have expired; provided further, that when a petition has been filed with the county clerk of a county for the abandonment and abolishment of such county, in accordance with the provisions of section 16-4002, the board of county commissioners of such county shall not thereafter enter into any contract under the provisions of said sections 4482 to 4482.2 or amendatory or supplemental acts, until the time has expired when such petition may

be presented to such board by the county clerk as provided in section 16-4002.

History: En. Sec. 14, Ch. 105, L. 1937.

NOTE.—The sections, referred to above, were repealed and superseded by Ch. 118, Laws 1937. See sections 16-1201 et seq.

16-4015. Claims and demands against abandoned county. All claims and demands for salaries, services, wages, materials, supplies and for all other current expenses and for claims and demands accruing under contracts, against any abandoned and abolished county, and for which said county was liable at the time it ceased to exist and which had not been approved and warrants issued therefor prior to the time it ceased to exist, shall be presented to the board of county commissioners of the county designated in the petition for abandonment as the county to which its territory is attached and made a part and all such claims and demands shall be acted on by the board of county commissioners of such county and warrants shall be issued in payment thereof in the same manner as though the same had been incurred by such county; provided that all such warrants shall be drawn and issued against the proper funds of such abandoned and abolished county; and provided further, that no such claim or demand shall be approved or warrant issued in payment thereof if the amount of such claim or demand exceeds the unexpended balance of appropriation for such purpose contained in the budget of the abandoned and abolished county for the year in which the same was incurred.

History: En Sec. 15, Ch. 105, L. 1937.

16-4016. Funds how transferred and used—bonds—tax levy. All moneys in each of the funds of an abandoned and abolished county shall be transferred to and paid over by the treasurer thereof to the treasurer of the county designated in the petition for abandonment as the county to which its territory is to be attached and becomes a part and shall be by such treasurer kept and maintained in separate funds in the name of such abandoned and abolished county, and used and applied for paying warrants issued against such funds by the abandoned and abolished county prior to the time it ceased to exist, and for paying warrants issued against such fund by the board of county commissioners of the county to which it is attached and becomes a part under the provisions of sections 16-4013 and 16-4015, and the interest on such warrants; provided that moneys in any bond sinking and interest funds of such abandoned and abolished county shall be used and applied for the sole purpose of paying the interest and principal becoming due on unpaid and outstanding bonds of such county. Taxes levied for all such funds which were delinquent on the days when such county ceased to exist, and for which tax sales had not been held and all licenses and other moneys owing to such county at such time shall be collected by the treasurer of the county designated in the petition for abandonment as the county to which its territory is to be attached and becomes a part and placed in and deposited to the credit of the funds of such abandoned and abolished county to which the same properly belong. When all warrants issued and outstanding against any fund of an abandoned and abolished county, with the interest thereon, have been fully paid, any balance standing to the credit of such fund shall be transferred to any other fund or funds of such

county in which there is not sufficient money to pay the warrants issued and outstanding against the same with interest thereon, and if, after payment of all warrants issued against all such funds and balances remain in any thereof the same shall be transferred to and become a part of the bond sinking and interest funds of such abandoned county.

(a) After all warrants have been drawn and issued against the funds of an abandoned and abolished county under the provisions of sections 16-4013 and 16-4015, if it shall appear to the satisfaction of the board of county commissioners of the county designated in the petition for abandonment as the county to which the territory of the abandoned and abolished county is to be attached and made a part, that the money in the several funds of such abandoned and abolished county, together with all moneys which may be received for such funds from the payment and collection of delinquent taxes, unpaid licenses and other sources, owing to such abandoned and abolished county, will be insufficient to pay all outstanding and unpaid warrants issued and drawn against such funds, then the board of county commissioners of such county shall make an order creating a special warrant district and shall include within such district all of the territory embraced within the boundaries of the abandoned and abolished county at the time it ceased to exist, and said board shall thereafter, and at the time of making and fixing tax levies for county purposes, make and fix a levy against all taxable property within such special warrant district for the payment of said warrants and the interest thereon, and the proceeds of such levy, when collected, shall be deposited by the county treasurer in a separate fund which shall be used for the payment of said warrants and interest and for no other purpose; provided that said tax levy need not be made at such a rate as will pay all of said warrants, with interest, in one year, but if said board of county commissioners shall deem it for the best interests of the taxpayers owning property within such special warrant district, such levy may be spread over a term of not more than three years.

(b) If it shall appear to the satisfaction of the board of county commissioners that a tax levy sufficient to pay such warrants and interest when spread over a term of three years will be too great a hardship on and too burdensome to the taxpayers owning property within the boundaries of such abandoned and abolished county, said board, instead of creating such special warrant district shall create and establish a special funding bond district and shall include within the boundaries thereof all of the territory embraced within the boundaries of such abandoned and abolished district at the time it ceased to exist. The board of county commissioners and the county clerk of the county to which the territory of such abandoned and abolished county has been attached and made a part shall be, respectively, the board of trustees and the clerk of such district and the county treasurer shall act as the treasurer thereof. The board of trustees shall adopt an appropriate seal for such district. After such district has been created and established the board of trustees shall direct the county treasurer to use and apply all moneys in the several funds of the abandoned and abolished county, except moneys in any bond sinking and interest funds, to the payment of warrants issued and outstanding against such funds, with the interest thereon, and said board of trustees shall thereupon issue and sell

bonds of such special funding bond district in an amount sufficient to pay all warrants against such funds remaining outstanding and unpaid, with the interest thereon, and the proceeds derived from the sale of such bonds shall be used for such purpose and no other. Such bonds shall not be issued for a longer period than ten (10) years, and shall be issued without submitting the question of doing so to any election. There shall be inserted and made a part of each such bond statements setting forth the purpose for which the same are issued and that said bonds do not incur, create or constitute any indebtedness or obligation whatever on the part of the county of (naming the county whose board of county commissioners, acting as such trustees, are issuing such bonds) but that the principal and interest thereof will be paid by special millage taxes levied against all of the taxable property situated within the boundaries of such special funding bond district. Such bonds shall be issued in the name of such district, shall be signed by the trustees, the clerk shall attest the same and affix the seal of the district thereof and they shall be registered in the office of the county treasurer who shall certify such registration on such bonds. Except as otherwise provided herein, and in so far as the same are not in conflict herewith, all of the provisions of chapter 20 of Title 16, and amendatory acts shall apply to, govern and control the issuance, sale and payment of such bonds, with the interest thereon, and the levying of taxes for such purposes. All taxes levied for the payment of the principal and interest of such bonds and all taxes levied by the abandoned and abolished county for all of its funds, except, bond sinking and interest funds, and delinquent at the time such county ceased to exist, and all moneys owing to such abandoned and abolished county from all other sources, shall be, when collected, paid into a special sinking and interest fund and used for the purpose of paying the principal and interest of such bonds, and for no other purpose.

(c) If any abandoned and abolished county shall have outstanding and unpaid any bonds at the time it ceases to exist, the territory within the boundaries of such county as they existed when such county so ceased to exist, shall constitute a special district for the payment thereof. The board of county commissioners of the county designated in the petition for abandonment as the county to which the territory of such county is to be attached and made a part shall annually levy a tax against all taxable property in such taxing district sufficient to pay the interest and principal of such bonds as the same become due, and all of the provisions of chapter 20 of Title 16, and amendatory acts, applicable thereto, shall apply to, govern and control the levying and collection of such taxes and the payment of interest and principal thereof by the boards and officers of the county within which such district is situated.

Any and all moneys in any bond sinking and interest funds of such abandoned and abolished county, when transmitted and paid over to the treasurer of the county to which the territory of such abandoned and abolished county has been attached, shall be credited to and deposited in a sinking and interest fund, and all taxes levied for the payment of such bonds and interest and delinquent at the time such county ceased to exist, and all taxes levied for such sinking and interest fund in accordance with the provisions of this section, and all other moneys coming to the hands of

such county treasurer for the use or benefit of such abandoned county when not required for any other purposes under the provisions of this act, shall be deposited to the credit of such sinking and interest fund and used for the payment of the principal and interest of such bonds and for no other purpose.

Whenever any levy is made under the provisions of subdivisions (a), (b) or (c) of this section the county clerk of the county in which the board of county commissioners make such levy shall immediately certify such levy to the county clerk of each other county to which any part of the territory of the abandoned county has been attached, and the county clerk of each such other county shall compute and extend the taxes against the property within the portion of the abandoned county which has been attached to his county and the treasurer of such county shall collect the same at the same time and in the same manner that other taxes are collected by said county treasurer, and each such treasurer shall, at least twice each year, once during the second week in December and once during the second week in June, transmit the amount of all such taxes paid to and collected by him, and then in his hands as county treasurer, to the treasurer of the county in which the board of county commissioners made such tax levy.

History: En. Sec. 16, Ch. 105, L. 1937.

16-4017. Disposition of moneys of abandoned district. If, after all warrants issued and drawn by an abandoned and abolished district during its existence against its several funds and all warrants drawn and issued against said funds under the provisions of sections 16-4013 and 16-4015, have been fully paid with the interest thereon, any balance remains in such funds, such balance, with any and all moneys thereafter accruing to any of such funds from the collection of delinquent taxes, unpaid licenses, and from other sources shall be deposited to the credit of any special sinking and interest fund for the payment of district funding bonds issued under the provisions of subdivision (b) of section 16-4016, and if there be no such fund then to the credit of any bond sinking and interest fund under subdivision (c) of section 16-4016; and after all warrants issued and drawn against any of such funds with the interest thereon, all district funding bonds issued under the provisions of subdivision (b) of section 16-4016 and all bonds referred to in subdivision (c) of section 16-4016, have been fully paid, then any balance remaining in any of such funds and all moneys accruing to any or all of such funds thereafter from any and all sources, shall be deposited to the credit of such funds of the county designated in the petition for abandonment as the county to which the territory of the abandoned and abolished county has been attached and made a part as its board of county commissioners may direct.

History: En. Sec. 17, Ch. 105, L. 1937.

16-4018. Tax liability—property in abandoned county—special warrant districts. Whenever a county is abandoned and abolished and its territory is attached to and made a part of an adjoining county, under the provisions of this act, none of the property situated within the boundaries of such abandoned and abolished county shall be subjected to taxation or taxed for the payment of any indebtedness of such adjoining county which may exist

at the time such territory is attached to and made a part of such adjoining county.

(a) After all warrants have been drawn and issued against the funds of such adjoining county to pay the claims and demands existing against such county, on the date when the territory of such abandoned and abolished county was attached to such adjoining county, all moneys in the funds of such adjoining county shall be used and applied in payment of the warrants drawn against its respective funds, and if such moneys are not sufficient to pay all of such warrants, with the interest thereon, then the board of county commissioners shall make an order creating a special warrant district and shall include within such district all of the territory of such adjoining county, but shall not include therein any of the territory of such abandoned and abolished county, and shall thereafter and at the time of making levies for county purposes, levy a special tax against all taxable property in such district to pay the warrants, with interest thereon, outstanding against the funds of said county; provided that the board of county commissioners, may, in its discretion extend such tax levy over a period of not to exceed three years.

(b) If it shall appear to the board of county commissioners that it will require too large a tax levy to pay such warrant indebtedness with interest thereon within three years, such board, instead of creating a special warrant district, shall create and establish a special funding bond district and shall include within the boundaries thereof all of the territory within such adjoining county, but shall not include therein any of the territory of the abandoned and abolished county attached to such adjoining county. Such board of county commissioners may, after all moneys in the several funds of said county applicable thereto, have been applied in payment of such outstanding warrants and interest thereon, and without submitting the question of doing so to an election, may issue bonds in an amount sufficient to pay and redeem all such warrants remaining outstanding, with interest thereon. Such bonds shall be issued in the name of said adjoining county, and shall contain recitals to the effect that the principal and interest thereof will be paid by millage tax levies against the property situated within the boundaries of said county as the same existed before the territory of such abandoned and abolished county was attached thereto, and that none of the property within the territory of such abandoned and abolished county will be subjected to such levies. Except as otherwise provided herein said bonds shall be issued and sold, tax levies shall be fixed and made to pay the principal and interest thereof as the same becomes due in the manner provided by chapter 20 of Title 16 and amendatory acts, and all the provisions thereof, so far as applicable thereto, shall apply to such bonds.

(c) If an adjoining county to which the territory of an abandoned and abolished county is attached and made a part shall have outstanding and unpaid bonds, at the time such territory is attached to and made a part of such county, such bonds shall be the indebtedness of such adjoining county, and none of the property situated within the territory of the abandoned county shall be subjected to any taxes to pay the principal or interest of such bonds, but such taxes shall be levied only against the property within the boundaries of such adjoining county as the same existed before the ter-

ritory of the abandoned and abolished county was attached to and made a part thereof.

History: En. Sec. 18, Ch. 105, L. 1937.

16-4019. Assessment of property. The county assessor of a county abandoned and abolished under the provisions of this act shall, within ten (10) days after it comes to exist deliver to the county assessor of each county to which any part of its territory had been attached and become a part of all assessment lists, reports, documents and instruments relating to, concerning, or in any way affecting the assessment during the then current assessment year of all taxable property within such portion of such abandoned and abolished county, and it shall be the duty of the assessor of the county, to whom such assessment lists, reports, documents and instruments have been delivered by the assessor of the abandoned and abolished county, to complete all assessments and to fully assess, during the then current assessment year, all taxable property situated or located, on the first Monday of March of such year, within the boundaries of such part of such abandoned and abolished county, and each such county assessor shall, in all matters and things connected in any way with the making of such assessments, have, possess and exercise all of the powers and rights and shall perform all of the duties which the assessor of the abandoned and abolished county would, or could have had, possessed, exercised or performed if such county had not been abandoned and abolished. The county assessor of such abandoned and abolished county shall, until twelve (12:00) o'clock midnight of the thirtieth day of June when said county ceases to exist, aid and assist the county assessors of the counties to which any part of the territory so to be abandoned and abolished will be attached and made a part, in the listing and assessing of all taxable property situated or located within each of such counties to the end that all taxable property within the boundaries of such abandoned county will be fully assessed and taxed.

History: En. Sec. 19, Ch. 105, L. 1937.

16-4020. Disposal of property—leasing—sale. (1) Each county to which any part of an abandoned and abolished county is attached and made a part and becoming the owner under the provisions of this act of the real and any tangible personal property of an abandoned and abolished county may use all of such property for county purposes, or may lease any of such real estate or sell any of such real estate or personal property provided that no such personal property having a value in excess of one hundred dollars (\$100.00) shall be sold unless the same has been appraised within one year immediately prior to the date of sale by three taxpayers, residing within the territory embraced within the boundaries of the abandoned and abolished county, appointed by the judge of the district court to which the county succeeding to the ownership of such property is attached, on petition of the board of county commissioners thereof, and no sale of any such personal property shall be made except at public sale after notice or for a price less than ninety per centum (90%) of such appraised value.

(2) No such real property shall be leased unless the board of county commissioners shall present to the judge of the district court to which the county is attached a petition describing the real estate, with any improve-

ments thereon, and setting forth the terms of the proposed lease, and the same shall be approved by such judge, which approval shall be endorsed on such petition and filed in the office of the clerk of said county.

(3) No real estate shall be sold by said board of county commissioners unless the same has been appraised within one year immediately prior to the date of sale by three taxpayers residing within the territory embraced within the boundaries of the abandoned and abolished county, appointed by the judge of the district court to which the county is attached, on petition of the board of county commissioners of such county, and every such sale of real estate shall be made at public sale and notice of such sale shall be published once a week for at least two weeks immediately prior to the date for holding the same, in the official newspaper of the county, and no such real estate shall be sold for a price less than ninety per centum (90%) of the appraised value thereof.

(4) The full purchase price of any real estate so sold shall not be required to be made in one payment but the purchaser thereof may pay the same in four installments, the first of which shall be not less than twenty-five per centum (25%) of the purchase price to be paid at the time of purchase, the remainder to be paid in three equal annual installments with interest thereon at not less than five per centum (5%) per annum. All real estate sold, with any improvements thereon, shall be subject to assessment and taxation annually to the purchaser or his successor in interest, at a value equal to the amount paid on the purchase price thereof until the purchase price is fully paid when such real estate shall be assessed at its full cash value, and any and all improvements placed on any such real estate, after its purchase, shall be subject to assessment and taxation at the full cash value thereof. Whenever the purchase price of any real estate is to be paid in installments the board of county commissioners shall enter into a contract with the purchaser thereof and such contract shall be recorded in the office of the county clerk. When payment in full has been made for any personal property or real estate the chairman of the board of county commissioners shall execute and deliver the proper bill of sale or deed to the purchaser, or his successor in interest.

(5) The compensation of all appraisers appointed under the provisions of this section shall be fixed by the district judge appointing the same. Moneys received from leases or sales of real or personal property by any county other than the county designated in the petition for abandonment as the county to which the territory of the abandoned county is to be allocated shall be transmitted by the officers of such counties to the treasurer of the county designated in such petition for abandonment.

(6) All moneys received from the sales of personal property and from the leasing or sales of real estate, after deducting therefrom the amounts paid appraisers and for publishing notices of sale, shall be used and applied as follows: If there are any warrants issued and outstanding against any of the funds of the abandoned and abolished county such moneys shall be applied in payment of such warrants and interest; if there are no such warrants outstanding but district bonds have been issued under the provisions of subdivision (b) of section 16-4016 then such moneys shall be deposited in the sinking and interest fund for such district bond; if there be no such

district bonds outstanding then such moneys shall be deposited to the credit of the sinking and interest funds for bonds issued and outstanding when the abandoned and abolished county ceased to exist, and if there be no such bonds outstanding and unpaid, then such moneys shall be apportioned to all of the counties to which parts of the abandoned county were attached in the proportion which the assessed valuation of the property in each such part on the first day of January immediately preceding the abandonment bears to the assessed valuation of all the property in such abandoned county and deposited in such funds of such county as the boards of county commissioners of such counties may direct.

History: En. Sec. 20, Ch. 105, L. 1937.

16-4021. Intention of act as to indebtedness of abandoned county. It is intended by the provisions of this act that no part of the indebtedness of an abandoned and abolished county shall be assumed by, become an obligation of or paid by a county to which the territory of the abandoned and abolished county is attached and made a part, but that all moneys in all funds of an abandoned and abolished county at the time it ceases to exist and all moneys thereafter received by such funds from the payment of taxes delinquent, unpaid licenses and from all other sources, owing to such county at the time it ceased to exist, and all moneys received from the rental or sale of the property owned by such county shall be used for the payment of its indebtedness existing at the time it ceased to exist and the cost and expense of attaching its territory to and making it a part of any adjoining county, and such county to which any part of its territory is attached and made a part shall receive only such balance of any such moneys as may remain after all of the indebtedness and cost are fully paid.

History: En. Sec. 21, Ch. 105, L. 1937.

16-4022. Effect on school districts. (1) All school districts and other special districts of an abandoned and abolished county shall continue as and be such school districts and special districts of the county to which such territory is attached and becomes a part, and the members of the boards of trustees or directors of such school districts or other special districts shall continue to be the trustees and directors thereof until the terms of office for which they were elected or appointed shall expire; provided that if any of such school districts shall bear the same numbers as school districts of the county to which the territory within the boundaries of such abandoned and abolished county is attached and made a part, the county superintendent shall either renumber the school districts of said abandoned and abolished county or shall give them such designation, in addition to their numbers, as will distinguish them from the districts in the county to which such territory is attached and made a part; and provided further that if the territory of any school district shall be divided and parts attached to two or more counties such school district shall be a joint school district of such counties.

(2) All funds of all school districts and of all other special districts of an abandoned and abolished county shall be transferred to and paid over to the county treasurer of the county to which the territory of such school district is attached and becomes a part, and shall be accounted for by said

county treasurer as the funds of such districts, provided that if a joint school district is created the state superintendent of public instruction shall designate the county treasurer to whom such funds are to be transferred and paid over. All taxes levied for all school funds and funds of other special districts of such abandoned and abolished county, remaining unpaid at the time said county ceased to exist, and all other moneys which would have accrued to such funds if said county had not been abandoned and abolished, when received by such county treasurer, shall be deposited to the credit of the proper school or special district funds.

History: En. Sec. 22, Ch. 105, L. 1937.

78 C.J.S. Schools and School Districts
§§ 21, 73.

Collateral References

Schools and School Districts 19(1),
41.

16-4023. County high schools, effect of abandonment of county on. (1)

If a county high school shall have been established in any abandoned and abolished county when such county ceases to exist such county high school shall become the high school of the district in which it is situated or located, and all property, both real and personal owned by such county or acquired for and used in connection with the maintenance and operation of such county high school, shall become and be the property of such school district to be used by such school district for the maintenance and operation of such district high school, and all lawful existing contracts of such county high school shall be assumed by and become the contracts of such school districts. The terms of office of all trustees of such county high school shall cease and terminate at the time the existence of said abandoned and abolished county shall cease and terminate.

(2) All moneys in all county high school funds shall be transferred and paid over to the treasurer of the county to which the territory in which the school district succeeding to the property of the county high school is attached and made a part, and used and applied as follows:

(3) Any moneys in any bond sinking and interest funds shall be used for the payment and interest on any unpaid and outstanding high school bonds; if there shall be outstanding any high school warrants at the time such county high school ceases to exist, then all moneys in such county high school funds, except sinking and interest funds, shall be used for the payment of such warrants, with interest thereon; if there be no such high school warrants outstanding then the moneys in such funds shall be transferred to the high school fund of the school district which, under the provisions of this act is to maintain such high school as a district high school, and if such moneys are insufficient to pay all outstanding warrants with the interest thereon then such warrant indebtedness shall be assumed by and become warrant indebtedness of such school district.

(4) All taxes levied for any sinking and interest fund for county high school bonds and remaining unpaid at the time the abandoned and abolished county ceases to exist, when collected, shall be deposited to the credit of such fund; and all taxes levied for high school purposes and remaining unpaid when such county ceases to exist, and all other moneys which would have gone to such high school if the county had not been abandoned and abolished, when collected shall be deposited to the proper high school funds

of the district in the county to which the territory of the abandoned and abolished county has been attached and made a part.

History: En. Sec. 23, Ch. 105, L. 1937. 78 C.J.S. Schools and School Districts § 56.

Collateral References

Schools and School Districts 42(2).

CHAPTER 41

COUNTY PLANNING AND ZONING DISTRICTS

- Section 16-4101. Planning and zoning districts—commission—creation.
 16-4102. Development pattern.
 16-4103. Adoption of development district.
 16-4104. Surveys and examinations—powers.
 16-4105. Regulations—appeals—permits for construction.
 16-4106. Effect of act upon powers of incorporated communities to plan adjacent areas.
 16-4107. "District" defined.

16-4101. Planning and zoning districts—commission—creation. When ever the public interest or convenience may require, and upon petition of sixty per centum (60%) of the freeholders affected thereby, the board of county commissioners is hereby authorized and empowered to order and create a planning and zoning district, and to appoint a commission consisting of five (5) members. The commission is to consist of the three (3) county commissioners, the county surveyor and the county assessor. Members of the commission shall serve without compensation other than reimbursement for duly authorized expenses, and shall be residents of the county in which they serve. The commission hereby is authorized to appoint necessary employees and fix their compensation with the approval of the board of county commissioners, to select a chairman to serve for one (1) year, to appoint a secretary who shall keep permanent and complete records of its proceedings, and to adopt rules governing the transaction of its business. The finances necessary for the transaction of the planning and zoning commission's business and to pay the expenses of employees and justified expenses of the members of the board shall be paid from a levy of not to exceed one (1) mill on the taxable valuation of the real property within such district.

History: En. Sec. 1, Ch. 154, L. 1953. 20 C.J.S. Counties § 49.

Collateral References

Counties 21½.

Zoning regulations as to privately owned parking places. 29 ALR 2d 867.

16-4102. Development pattern. For the purpose of furthering the health, safety and general welfare of the people of the county, the county planning and zoning commission hereby is empowered, and it shall be its duty to make and adopt a development pattern for the physical and economic development of the planning and zoning district. Such development pattern, with the accompanying maps, plats, charts and descriptive matter, shall show the planning and zoning commission's recommendations for the development of the districts, within some of which it shall be lawful and with others of which it shall be unlawful to erect, construct, alter or maintain certain buildings, or to carry on certain trades, indus-

tries or callings, or within which the height and bulk of future buildings and the area of the yards, courts and other open spaces and the future uses of the land or buildings shall be limited and future building set backlines shall be established. No planning district or recommendations adopted under this act shall regulate lands used for grazing, horticulture, agriculture or for the growing of timber; providing that existing non-conforming uses may be continued, although not in conformity with such zoning regulations.

History: En. Sec. 2, Ch. 154, L. 1953.

16-4103. Adoption of development district. Adoption by the planning and zoning commission of the development district, or any change therein, may be in whole or in part, but must be by the affirmative vote of the majority of the whole commission, provided, however, that prior to any such adoption a public hearing shall have been held not less than fifteen (15) days after notice thereof shall have been posted in at least three (3) public places within the area affected. The resolution adopting the district or any part or parts covering one or more of the functional elements which may be included within the district, shall refer expressly to the maps, charts and descriptive matters forming the pattern or part thereof; provided that the board of county commissioners shall have the power to authorize such variance from the recommendations of the planning commission as will not be contrary to the public interest, where, owing to special conditions a literal enforcement of the decision of the planning and zoning commission will result in unnecessary hardship.

History: En. Sec. 3, Ch. 154, L. 1953.

16-4104. Surveys and examinations—powers. The planning and zoning commission, and any of its members, officers and employees in the performance of their functions, may enter upon any land and make examinations and surveys and place and maintain the necessary monuments and markers thereon. In general, the planning and zoning commission shall have such powers as may be appropriate to enable it to fulfill its functions and duties to promote county planning and to carry out the purposes of this act. All public officials, departments and agencies, having information, maps, and data deemed by the commission pertinent to county planning are hereby empowered and directed to make such information available for the use of the county planning and zoning commission.

History: En. Sec. 4, Ch. 154, L. 1953.

16-4105. Regulations—appeals—permits for construction. The planning and zoning commission may, for the benefit and welfare of the county, prepare and submit to the board of county commissioners, drafts of resolutions for the purpose of carrying out the development districts, or any part thereof, previously adopted by the commission, including zoning and land use regulations, the making of official maps and the preservation of the integrity thereof, and including procedure for appeals from decisions made under the authority of such regulations, and regulations for the conservation of the natural resources of the county, and the board of county commissioners is hereby authorized to adopt such resolutions; provided that any person aggrieved by any decision of the commission or

the board of county commissioners, may, within thirty (30) days after such decision or order, appeal to the district court in the county in which the property involved, is located. The planning and zoning commission hereby is empowered to authorize and provide for the issuance of permits as a prerequisite to construction, alteration or enlargement of any building or structure otherwise subject to the provisions of this act, and may establish and collect reasonable fees therefor. The fees so collected are to go to the general fund of the county.

History: En. Sec. 5, Ch. 154, L. 1953.

Collateral References

Violation of zoning ordinance and regulation as affecting or creating liability for injuries or death. 31 ALR 2d 1469.

Zoning regulations as applied to schools, colleges, universities, and the like. 36 ALR 2d 653.

Validity of zoning regulations with respect to uncertainty and indefiniteness of district boundary lines. 39 ALR 2d 766.

16-4106. Effect of act upon powers of incorporated communities to plan adjacent areas. The authority heretofore granted by law to the incorporated communities to approve subdivision plats within the unincorporated area adjacent to their corporate limits is not abrogated by this act except and until the board of county commissioners having jurisdiction over such adjacent area establish a planning commission, and adopt initial regulations for subdivision control within adjacent areas or districts. Authority of the adjacent municipality shall be suspended on the effective date of the county regulation with respect to all areas governed by county subdivision regulations.

History: En. Sec. 6, Ch. 154, L. 1953.

Collateral References

Standing of lot owner to challenge validity or regularity of zoning changes dealing with neighboring property. 37 ALR 2d 1143.

16-4107. "District" defined. For the purposes of this act the word "district" shall mean any area that consists of not less than forty (40) acres.

History: En. Sec. 7, Ch. 154, L. 1953; amd. Sec. 1, Ch. 229, L. 1955.

CHAPTER 42

MOSQUITO CONTROL DISTRICTS

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| Section | 16-4201. Definitions. |
| | 16-4202. Board of county commissioners—power to create districts. |
| | 16-4203. Petition for district—hearing. |
| | 16-4204. Notice of hearing—mailing—publication—posting. |
| | 16-4205. Objections to district—if owners of 51% of land area within proposed district object, commissioners not to proceed with creation of district. |
| | 16-4206. Enlargement of districts—petitions—objections. |
| | 16-4207. Mosquito control board—members—term—per diem. |
| | 16-4208. Mosquito control board—powers. |
| | 16-4209. State mosquito advisory committee—members—duties. |
| | 16-4210. Mosquito control fund. |
| | 16-4211. Dissolution of mosquito control district—hearing—notice—unexpended funds. |
| | 16-4212. Removal, correction, prevention of conditions on lands contributing to production of mosquitoes—hearings—appeals—penalties. |
| | 16-4213. Joint mosquito control districts. |
| | 16-4214. Act controlling over other acts. |

16-4201. Definitions. In this act the expression:

- (a) "Commissioners" shall mean the board of county commissioners of any county;
- (b) "District" shall mean any mosquito control district created under the provisions of this act;
- (c) "Board" shall mean the mosquito control board for any district created under this act;
- (d) "Committee" shall mean the state mosquito advisory committee;
- (e) "Resident-owned land" shall mean land situated within any district created or proposed to be created under this act the owner of which resides within the county in which such district or proposed district lies;
- (f) "Resident freeholders" shall mean owners of land situated within any district created or proposed to be created under this act who reside in the county in which said land lies;
- (g) "Mosquito" shall mean any insect belonging to the family Culicidae of the order Diptera;
- (h) "Mosquito pest" shall mean any group of mosquitoes which annoy man or his domestic animals or transmit any disease of man or of his domestic animals.

History: En. Sec. 1, Ch. 183, L. 1953.

Collateral References

Agriculture—1.

3 C.J.S. Agriculture § 31.

16-4202. Board of county commissioners—power to create districts.

The board of county commissioners of any county shall have the power to create one (1) or more mosquito control districts within such county in the manner hereinafter provided.

History: En. Sec. 2, Ch. 183, L. 1953.

16-4203. Petition for district—hearing. When a petition signed by twenty-five per cent (25%) of the resident freeholders of any proposed district, is presented to the board of commissioners of such county, asking for the creation of a mosquito control district, the commissioners shall set a day for the hearing of the same and order notice thereof to be given to all persons interested, as is hereinafter provided. Said petition shall set forth the boundaries of the proposed district. Such proposed district may include any incorporated or unincorporated city or town of the county.

History: En. Sec. 3, Ch. 183, L. 1953;
amd. Sec. 1, Ch. 226, L. 1955.

16-4204. Notice of hearing—mailing—publication—posting. Notice of such hearing shall be mailed, by registered letter, to each nonresident landowner within the proposed district, at his last known address. The address of the landowner as set forth in the conveyance by which he secured title, provided such conveyance contains his address, shall be deemed his last known address, unless by affidavit it shall appear that the landowner has another address. If no known address appears, service shall be deemed complete upon publication as hereinafter provided for. Such notice shall also be posted in three (3) public places within the district, and where the district is partly in one county and partly in another county, notice must be posted in each county, but not in three (3) places in each county, and be published in a newspaper within or nearest the district, and if the

district is partly in one (1) county and partly in another county, in a newspaper in each county, if such newspaper exists. Such publication must be for two (2) weekly issues and such posting, mailing and first publication shall be at least ten (10) days before the hearing. Accompanying petition for creation of a district shall be sufficient funds to defray the cost of publication and posting.

History: En. Sec. 4, Ch. 183, L. 1953.

16-4205. Objections to district—if owners of 51% of land area within proposed district object, commissioners not to proceed with creation of district. At such a hearing or at any time following the first (1st) publication of notice of such hearing, until the time of said hearing, any landowner may file his written objections to the creation of the district. Such objections shall be delivered to the county clerk, who shall endorse thereon the date of its receipt by him. Upon such hearing, if the commissioners believe the creation of such a district to be to the best interest of such area and those resident therein, they shall by an order, duly made and entered on their minutes, declare the district created, setting forth the name and boundaries of the district and the description of land contained therein. Provided, that if the owners of fifty-one per cent (51%) or more of the land within the proposed district file their written objections to the creation of such district, the commissioners shall not proceed with the creation of such district. Before setting a time for hearing such petition, the commissioners may cause a survey and study of the area sought to be included in such district to be made by competent personnel and may submit a report thereof to the state mosquito advisory committee for its review and recommendations.

History: En. Sec. 5, Ch. 183, L. 1953.

16-4206. Enlargement of districts—petitions—objections. Any such district at any time subsequent to its creation may be enlarged to include adjacent land upon the presentation to the board of county commissioners of a petition signed by the owners of twenty-five per cent (25%) of the resident-owned land lying within the area proposed to be annexed to the district. If any such petition for enlargement of an existing district is presented, the board of county commissioners shall set a time for hearing thereon and shall cause notice thereof to be given in the manner provided by section 16-4204. If, upon such hearing, the commissioners believe it to be to the best interests of the area and those resident therein that such area be annexed to the district, they shall by an order duly made and entered on their minutes, declare the area in question to be annexed to the district, and such annexed area shall thenceforth be considered a part of such district for all purposes as thereof originally included therein. If prior to the time of such hearing, written objections are filed in the manner provided in section 16-4205 by owners of fifty-one per cent (51%) or more of the land included in the area proposed to be annexed to the district, the commissioners shall not act on such petition.

History: En. Sec. 6, Ch. 183, L. 1953.

16-4207. Mosquito control board—members—term—per diem. Upon the creation of any mosquito control district, the commissioners shall

appoint a mosquito control board composed of not less than three (3) nor more than five (5) members, each of whom shall be a freeholder within the district. The terms of office for the first appointed members shall be so arranged that they do not all expire at the same time, and for that purpose may be set for any length of time not more than three (3) years. Thereafter the terms of all members shall be three (3) years, the term of one (1) member expiring on the first (1st) day of July in each year. Said board shall be a body corporate and shall act as such, and said members shall be public officers and they shall organize each year by choosing a chairman who shall be from among the appointed members, and a secretary. All such board members shall serve without pay, except that the appointed members shall receive ten dollars (\$10.00) per diem for each day when the board is actually in session and their necessary mileage as provided by law. The health officer having jurisdiction in the proposed district, sanitarian or a member of his staff, and the county extension agent, if the county has any, or all such officers, shall be ex-officio members of such board without vote.

History: En. Sec. 7, Ch. 183, L. 1953.

16-4208. Mosquito control board—powers. The mosquito control board shall have power:

1. To develop and administer a program for the abatement and alleviation of mosquito pest conditions within the district.
2. To employ such suitable and competent assistants and employees as may be necessary and provide for their compensation.
3. To purchase, rent, or execute leasing agreements for such equipment and material as they may determine to be necessary for carrying on an effective control program.
4. To cooperate with any corporation, association, individual, or group of individuals, including any agency of the federal or state governments, in a mosquito abatement program.
5. To receive gifts, grants or donations for the purpose of advancing its program.
6. To take such action as may be necessary or advisable to survey, control, modify or abate any condition which may or does contribute to the existence of the mosquito pest, and for this purpose to enter upon any premises located within the said district, through its members, employees or agents.

History: En. Sec. 8, Ch. 183, L. 1953.

16-4209. State mosquito advisory committee—members—duties. (a) There is hereby established a state mosquito advisory committee which shall be composed of the state board of entomology and the heads of the departments of agricultural engineering, agronomy and soils of Montana state college. The chairman of the state board of entomology shall be the chairman of said committee.

(b) It shall be the duty of such committee to advise the commissioners of any county relative to the creation of mosquito control districts within such county and to advise the boards of such districts in connection with their control programs.

(c) Annually on or before the first (1st) day of February, the board of each district shall submit to such committee for its review and advice a written report of its operations for the preceding year and a written plan covering its control program for the ensuing year.

History: En. Sec. 9, Ch. 183, L. 1953.

16-4210. Mosquito control fund. The board of county commissioners of any county within which a mosquito control board has been created shall establish a mosquito control fund, and at the time fixed by law for levy and assessment of taxes shall levy a tax of not exceeding five (5) mills on the dollar of the total taxable valuation in such district on the real property situated within the said district, the proceeds of which shall be placed in a separate fund with the county treasurer of such county and shall be used solely for the purpose for which such mosquito control district was created. Warrants upon such fund shall be drawn by the board of county commissioners upon the presentation of claims approved by the mosquito control board.

History: En. Sec. 10, Ch. 183, L. 1953.

16-4211. Dissolution of mosquito control district—hearing—notice—unexpended funds. A mosquito control district may be dissolved upon presentation to the board of county commissioners of a petition signed by the owners of at least fifty-one per cent (51%) of the resident-owned land lying within such district. Upon the filing of such petition, the board of county commissioners shall set a time for hearing the same and shall cause notice thereof to be posted in at least three (3) public places within said district and to be published, at least, once in the official newspaper of the county, published in said district, such posting and publication to be at least ten (10) days before said date of hearing. If the district is partly in one (1) county and partly in another county, notice must be posted in each county but not three (3) times in each county, and notice must be published in the official newspaper of each county. If upon such hearing, the commissioners find such petition to be sufficient and that there is good reason for the dissolution of such district, the commissioners shall enter upon their minutes an order dissolving such district. The effective date of such dissolution shall be set by the commissioners at such time within the fiscal year as best conforms with the operations of the county budget. Any funds unexpended at the dissolution of a district shall be paid over into the county general fund, and where the district is partly in one (1) county and partly in another county, the funds shall be apportioned between the counties and such apportionment shall be based on the taxable value of the land which is within the district. Physical assets may be liquidated as provided for in section 16-1009, and where the district is partly in one (1) county and partly in another county, the proceeds of the sale of physical assets will be apportioned in like manner as the liquid assets.

History: En. Sec. 11, Ch. 183, L. 1953.

16-4212. Removal, correction, prevention of conditions on lands contributing to production of mosquitoes—hearings—appeals—penalties. (a) Whenever there exists within the district any condition which unneces-

sarily contributes to the production of mosquitoes, and in the judgment of the board it is reasonably feasible for the owner of the land on which such condition exists to remove, correct or prevent the same, the board shall have the power to notify such landowner in writing to remove, correct or destroy such condition within a reasonable time, to be specified in such notice, and to prevent the recurrence thereof. The board shall provide for a hearing whenever there is a condition upon the land in need of attention as provided for and in keeping with the provisions of this act. The board shall determine from the evidence presented at the hearing whether the above mentioned condition does exist and shall order compliance in keeping with the provisions of this act. The landowner shall have the right of appeal, which said appeal shall be conducted in the same manner as appeals in civil action.

(b) Any person who in any manner wilfully interferes with the mosquito control board, its officers, agents or employees in carrying out the provisions of this act shall be guilty of a misdemeanor and upon conviction thereof shall be fined not to exceed the sum of one hundred dollars (\$100.00), and if the court should so determine, such person shall also be subject to the requirement of giving a bond to keep the peace to prevent further future interference with the work of said officials, their agents and employees.

(c) All fines, forfeited bonds, and penalties collected under the provisions of this act shall be paid to the county treasurer of each county and by him placed to the credit of the mosquito control fund.

History: En. Sec. 12, Ch. 183, L. 1953.

16-4213. Joint mosquito control districts. Joint mosquito control districts, that is, districts which lie partly in one (1) county and partly in another, may be created or dissolved in the same manner as provided in this act for other districts, except that in such cases all petitions must be directed to the commissioners of each county affected, and must be acted upon by them concurrently. In the case of such districts, the mosquito control board shall be constituted in the same manner and shall have the same powers as in this act is provided for other boards, except that appointments shall be made by joint action of the commissioners in all counties affected and each county shall be represented among the appointed members of the board. The county health officer, county sanitarian and county extension agent of each county shall be ex-officio members of the board without vote. The annual tax levy, if any, shall be made by agreement of the commissioners of all counties affected and shall apply uniformly throughout such joint districts.

History: En. Sec. 13, Ch. 183, L. 1953.

16-4214. Act controlling over other acts. Insofar as the provisions of this act are inconsistent with the provisions of any other law, the provisions of this act shall be controlling.

History: En. Sec. 14, Ch. 183, L. 1953.

CHAPTER 43

PUBLIC HOSPITAL DISTRICTS

- Section 16-4301. Purpose of act—allowable territory embraced within public hospital district.
- 16-4302. Petition to board of county commissioners.
- 16-4303. Hearing.
- 16-4304. Reference of creation of district at election.
- 16-4305. Resolution and order of board as respects election.
- 16-4306. Favorable vote—commissioners finally to organize district.
- 16-4307. Government of district—appointment, election and terms of trustees.
- 16-4308. Powers of district.
- 16-4309. Budget and tax levy.
- 16-4310. Regulations.
- 16-4311. Withdrawal of portion of district, petition for.
- 16-4312. Alteration of boundaries—annexation.
- 16-4313. Dissolution of district.

16-4301. Purpose of act—allowable territory embraced within public hospital district. The purpose of this act is to authorize the establishment of public hospital districts which shall have power to own and operate public hospitals, or to lease and operate public hospitals, or to maintain or aid in the maintenance and operation of a public hospital, and in either case to supply hospital facilities and services to residents of such districts, and as herein authorized, to others. A public hospital district may contain the entire territory embraced within a county or any portion or subdivision thereof.

History: En. Sec. 1, Ch. 155, L. 1953.

Collateral References

Hospitals 2.

41 C.J.S. Hospitals § 4.

16-4302. Petition to board of county commissioners. Whenever a petition, signed by not less than thirty per centum (30%) of the citizens who are owners of property located within the boundaries of a proposed public hospital district, and whose names appear as such property owners upon the last completed assessment roll of the county in which said proposed district is situated, which petition shall definitely describe the boundaries of the proposed district and request that the territory within said boundaries be organized into a public hospital district, shall be addressed and presented to the board of county commissioners of the county in which the proposed district is situated, at any regular or special meeting of said board, it shall file the same and act thereon as herein prescribed. The said board of county commissioners, by resolution, shall fix a time for a hearing upon said petition at not less than two (2) nor more than four (4) weeks from the time of presentation thereof, and shall cause notice to be given of the time and place of said hearing by publication in a newspaper published in the county in not less than two (2) successive issues of said newspaper, the last publication of which notice shall be at least two (2) weeks before said hearing. Said notice shall state that any person residing in or owning property within said proposed district or any part thereof as described in said petition, may appear before said board at the hearing and show cause why the said district should not be created.

History: En. Sec. 2, Ch. 155, L. 1953.

16-4303. Hearing. At the time fixed for said hearing, the board shall determine whether or not the petition complies with the requirements

hereinbefore set forth and whether or not the notice required herein has been published as required. At such hearing the board must hear all competent and relevant testimony offered in support of or in opposition to said petition and the creation of such district. Said hearing may be adjourned from time to time for the determination of said facts, or hearing petitioners or objectors, but no adjournment shall exceed two (2) weeks in all from and after the date originally noticed and published for the hearing.

History: En. Sec. 3, Ch. 155, L. 1953.

16-4304. Reference of creation of district at election. If the board of county commissioners shall determine that the petitioners have complied with the requirements herein set forth and that the prescribed notice has been published, it shall thereupon proceed by resolution to refer the question of the creation of such district to the persons qualified to vote on such proposition as in this act prescribed. Said board, in its resolution of reference, may make such changes in the boundaries of the proposed district as it may deem advisable, without, however, including any additional lands not described in the petition, and shall define and establish the boundaries of the district, and it shall call an election, upon the question of the creation of the district.

History: En. Sec. 4, Ch. 155, L. 1953.

16-4305. Resolution and order of board as respects election. The board must, in its resolution, designate whether or not a special election shall be held, or whether the matter shall be determined at the next general election. If a special election is ordered, the board must, in its order, specify the time and place for such election, the voting places, and shall in said order appoint and designate judges and clerks therefor. The election shall be held in all respects as nearly as practicable in conformity with the general election laws; provided that the polls shall be open from eight (8) o'clock A.M. to six (6) o'clock P.M., on the day appointed for such election. At such election, the ballots must contain the words "Hospital District, Yes" and "Hospital District, No." The judges of the election shall certify to the board of county commissioners the results of said election. No person shall be qualified to vote at such election who has not attained twenty-one (21) years of age, who is not an owner of property within the boundaries of said district as defined by the board, and whose name does not appear on the last completed assessment roll of the county.

History: En. Sec. 5, Ch. 155, L. 1953.

16-4306. Favorable vote—commissioners finally to organize district. In the event that a majority of the votes cast are in favor of the creation and establishment of said hospital district, the board of county commissioners shall, within ten (10) days after the election, by resolution certify such result, and proceed with the organization of such district as herein specified.

History: En. Sec. 6, Ch. 155, L. 1953.

16-4307. Government of district—appointment, election and terms of trustees. Said hospital district shall be governed and managed by a board

of three (3) trustees, elected by the persons within the district who have the same qualifications as voters upon the question of "creation of the district." The trustees must be elected from among the freeholders residing within said district, and the trustees elected for the first board shall serve for terms commencing upon their being elected and qualified and terminating one (1) two (2) and three (3) years respectively, from the first Monday in May following their election, and until their respective successors shall be elected and qualify. Annually thereafter there shall be elected a trustee to serve for a term of three (3) years and until his successor shall be elected and qualify and such term of three (3) years shall commence on the first Monday in May following the said trustee's election. The first board of trustees shall be elected at the same election held upon the creation of the district, subject to the creation thereof, shall qualify upon the organization of the district, if created, and the trustees may be nominated and have their names appear upon the ballots upon the filing with the board of county commissioners of a petition signed by any five (5) qualified electors of the district. Any elector may sign as many nominating petitions as there are persons to be elected. All elections and nominations for election of trustees thereafter, shall be conducted by said qualified voters in the same manner as provided by the laws of the state of Montana for the election of school trustees of a second or third class school district, provided that wherever in the said laws of the state of Montana it is provided that certain action shall be performed or filings made with the clerk of the school board, the trustees or the board of trustees of the school district or the county superintendent of schools, the same shall, for the purposes of this act, be taken to refer to the clerk of the board of trustees of the public hospital district, the trustees or the board of trustees of the public hospital district or the county clerk, respectively. The trustees at their first meeting shall adopt by-laws for the government and management of the district, and shall appoint a qualified person to serve as clerk of the said board, who may or may not be one of their number. The trustees shall serve without pay. A vacancy upon the board of trustees, or in the office of clerk shall be filled by appointment by the remaining members and the appointee shall serve until the next ensuing election for trustees.

History: En. Sec. 7, Ch. 155, L. 1953;
amd. Sec. 1, Ch. 97, L. 1955.

16-4308. Powers of district. Said district may own and operate a public hospital; may lease and operate a public hospital; may maintain, or aid in the maintenance and operation of, a public hospital within said district; may hold title to property by grant, gift, devise, bequest, lease, contract, or in trust, or by any lawful method; and it may perform all acts necessary or proper for the carrying out and supply of hospital services and facilities. Such a hospital must admit persons without regard to race, color, or sex, but such obligation shall not prevent the board of trustees of such hospital from establishing reasonable minimum rates for hospital quarters, services and supplies; indigents needing such services, and for the rendition of which provision is made by the laws of Montana, must be admitted to such public hospitals, on terms and rates prescribed or authorized by law.

History: En. Sec. 8, Ch. 155, L. 1953.

16-4309. Budget and tax levy. The board of hospital trustees shall, annually, present their budget to the board of county commissioners at the regular budget meetings as prescribed by law, and therewith certify the amount of money necessary and proper for the ensuing year. The board of county commissioners must, annually, at the time of levying county taxes, fix and levy a tax, in mills, upon all property within said hospital district clearly sufficient to raise the amount certified by the board of hospital trustees. The tax so levied shall not in any year exceed three (3) mills on each dollar of taxable valuation of property within said district.

History: En. Sec. 9, Ch. 155, L. 1953.

16-4310. Regulations. The trustees shall make proper rules and regulations for the management of such hospitals. The procedures for the collection of the tax shall be in accordance with the existing laws of the state of Montana. The funds collected under the tax levy shall be held by the county treasurer who shall be, ex-officio, the treasurer for the hospital district and such treasurer shall keep a detailed account of all tax moneys paid into the fund, of all other moneys from any source received by the district, and of all payments and disbursements from the fund. Funds shall be paid out on warrants issued by direction of the board of trustees, signed by the majority of its membership.

History: En. Sec. 10, Ch. 155, L. 1953;
amd. Sec. 2, Ch. 97, L. 1955.

16-4311. Withdrawal of portion of district, petition for. Any portion of a public hospital district may be withdrawn therefrom as in this section provided, upon receipt of a petition signed by fifty-one per centum (51%) of the taxpayers, or more, residing in and owning property within the area desired to be withdrawn from any public hospital district, on the grounds that such area will not be benefited by remaining in said district. The board of county commissioners shall, upon the filing of such a petition, fix a time for the hearing of such withdrawal petition which time shall not be more than four (4) weeks after the receipt thereof. The board shall, at least two (2) weeks prior to the time so fixed, publish a notice of such hearing in two (2) successive issues of a newspaper published in the county. No petition for withdrawal shall be entertained or acted upon by the board, unless the same is filed before the first Monday in March of any year. Any person interested may appear at said hearing and present objections to the withdrawal of said portion from said district. The board shall consider the petition and all objections thereto, and pass upon the merits thereof, and make its order in accordance therewith. Such order is subject to review by the district court of the county, and appeal may be taken from the final judgment of such district court to the supreme court of Montana.

History: En. Sec. 11, Ch. 155, L. 1953.

16-4312. Alteration of boundaries—annexation. The boundaries of any such public hospital district may be altered and outlying districts be annexed from territory contiguous thereto in the following manner: A petition signed by ten per centum (10%) or more freeholders within the

territory proposed to be annexed, or by a majority of such freeholders if there are less than twenty-five (25) residing within the area proposed to be annexed, designating the boundaries of such contiguous territory proposed to be annexed and asking that it be annexed to said public hospital district, shall be presented to the board of county commissioners of the county in which said public hospital district is situated. At the first regular meeting after the presentation of said petition, said board of county commissioners shall cause notice of said petition to be published in two (2) successive issues of a newspaper published in the county prior to the date fixed by said board for the hearing of said petition, which date shall be not less than four (4) weeks after the filing of such petition. Upon the date fixed for such hearing or continuance thereof, said board shall take up and consider said petition and any objections which may be filed to the inclusion of any additional area or territory in said district. Said board of county commissioners shall have the power by order entered on its minutes to grant said petition either in whole or in part, and by order entered on its minutes to alter the boundaries of said public hospital district and to annex thereto all, or such portion of said area or territory described in said petition as will be benefited thereby. This territory shall become and be a part of such public hospital district and shall be subject to the tax authorized by this act, together with the pre-existing area of said district, and such tax shall be uniform for the whole area and territory in the district, as enlarged.

History: En. Sec. 12, Ch. 155, L. 1953.

16-4313. Dissolution of district. At any time after five (5) years from the date any public hospital district is created, such district may be dissolved upon presentation to the board of county commissioners of a petition signed by at least fifty-one per centum (51%) of the owners of property lying within such district as shown by the last completed assessment roll. Upon the filing of such petition, the board of county commissioners shall set a time for hearing the same and shall cause notice thereof to be posted in at least three (3) separate public places within said district for at least two (2) weeks prior to the hearing, and which notice shall, also, be published for at least two (2) successive issues in a newspaper published in the county prior to such hearing. If upon such hearing the commissioners find such petition to be sufficient and that the district is not indebted in any amount beyond funds immediately available to extinguish all of its debts and obligations and that there is good reason for the dissolution of such district, the commissioners shall enter upon their minutes an order dissolving such district. Such order shall be filed, of record, and the dissolution shall be effective for all purposes six (6) months after the date of filing said order of dissolution, providing that at or before such time the board of trustees of said district certifies to the board of county commissioners that all debts and obligations of the district have been paid, discharged or irrevocably settled, together with legal proof thereof.

History: En. Sec. 13, Ch. 155, L. 1953.

TITLE 17

DAMAGES AND RELIEF

- Chapter 1. Relief in general, 17-101, 17-102.
2. Compensatory relief—damages—interest—exemplary damages, 17-201 to 17-208.
 3. Measure of damages, 17-301 to 17-319.
 4. Damages for wrongs, 17-401 to 17-409.
 5. Penal damages, 17-501 to 17-505.
 6. Value—how estimated—limitations of damages, 17-601 to 17-609.
 7. Specific relief—purchases of property, 17-701 to 17-707.
 8. Specific relief—performance of obligations, 17-801 to 17-812.
 9. Specific relief—revision and rescission of contracts, 17-901 to 17-907.
 10. Specific relief—cancellation of instruments, 17-1001 to 17-1003.
 11. Preventive relief—injunctions, 17-1101.

CHAPTER 1

RELIEF IN GENERAL

- Section 17-101. Species of relief.
- 17-102. Relief in case of forfeiture.

17-101. (8657) Species of relief. As a general rule, compensation is the relief or remedy provided by the law of this state for the violation of private rights, and the means of securing their observance; and specific and preventive relief may be given in no other cases than those specified in this part of the code.

History: En. Sec. 4260, Civ. C. 1895; re-en. Sec. 6038, Rev. C. 1907; re-en. Sec. 8657, R. C. M. 1921. Cal. Civ. C. Sec. 3274.

NOTE.—The part of the code above referred to is contained in Title 17.

Unlicensed Photographers

The taking of photographs, either by licensed or unlicensed photographers, not being a nuisance, an injunction could not be had to prevent the activities of unlicensed photographers. Montana State

Board of Examiners v. Keller, 120 M 364, 185 P 2d 503, 506.

References

Cited or applied as section 6038, Revised Codes, in Clifton v. Willson, 47 M 305, 310, 132 P 424; Burles v. Oregon Short Line R. R. Co., 49 M 129, 131, 140 P 513.

Collateral References

Action \S 16 and other particular topics. 1 C.J.S. Actions \S 3.

17-102. (8658) Relief in case of forfeiture. Whenever, by the terms of an obligation, a party thereto incurs a forfeiture, or a loss in the nature of a forfeiture, by reason of his failure to comply with its provisions, he may be relieved therefrom, upon making full compensation to the other party, except in case of a grossly negligent, wilful, or fraudulent breach of duty.

History: En. Sec. 4261, Civ. C. 1895; re-en. Sec. 6039, Rev. C. 1907; re-en. Sec. 8658, R. C. M. 1921. Cal. Civ. C. Sec. 3275.

Down Payment

Where a \$500 down payment was made on the purchase of land and the balance of \$700 was to be paid under the terms

of an escrow agreement by a specified date and purchaser failed to pay balance by such date, after which seller sold to another, such first purchaser was entitled to the return of the \$500 down payment. Herman v. Herman, 123 M 39, 207 P 2d 1155, 1157.

Essential Allegations

This section is based upon the principle that he who seeks equity must do, or offer to do, equity; and to obtain relief he must, by his allegations and proof, bring himself within its purview. *Clifton v. Willson*, 47 M 305, 310, 132 P 424. See *Donlan v. Arnold*, 48 M 416, 422, 138 P 775.

The party who invokes the protection of this section must set forth facts that will appeal to the conscience of a court of equity. *Fratt v. Daniel-Jones Co.*, 47 M 487, 499, 133 P 700; *Donlan v. Arnold*, 48 M 416, 422, 138 P 775.

Where a purchaser of property seeks to avoid forfeiture of an advance payment incurred by reason of his failure to complete his contract, he must, under this section, allege and prove that his default was not the result of his grossly negligent, wilful or fraudulent breach of duty, failure to do so which deprives him of the right to invoke the rule on appeal. *Ellinghouse v. Hansen Packing Co.*, 66 M 444, 448, 213 P 1087.

When Relief is Improper

Where a vendor retains the legal title to property sold to a purchaser, who defaults in meeting deferred payments, and an action is brought to enforce a forfeiture caused by such default, sections 45-112 and 45-1101 are not pertinent nor applicable; there is no lien; and, therefore, there is no basis for denying a forfeiture of the contract of sale. *Cook-Reynolds Co. v. Chipman*, 47 M 289, 298, 133 P 694.

In an action against a corporation to enforce the immediate forfeiture of a contract of purchase for the vendee's failure to make any deferred payment, the corporation is not entitled to any relief on the ground that its officers were so engrossed with other business that they forgot that a payment was due on the contract, especially where time has been made of the essence of the contract. *Fratt v. Daniel-Jones Co.*, 47 M 487, 500, 133 P 700.

Plaintiff held not entitled to relief under the facts of the case. *Donlan v. Arnold*, 48 M 416, 422, 138 P 775.

Where a purchaser has failed to make payments, according to the terms of his contract, but has made some partial payments, before his breach of the contract, he cannot, ordinarily, recover the payments made before the breach, nor can he, under any circumstances, recover them without alleging and proving that the default was not the result of his "grossly negligent, wilful, or fraudulent breach of duty." *Suburban Homes Co. v. North*, 50 M 108, 115, 145 P 2.

A defaulting purchaser of land under a contract which made time of the essence of it and under which the vendor exercised his option to declare it ended

upon breach, who had made no down payment and had paid only the first year's interest during his two years' possession, was not entitled to recover back what he had expended on the premises, under this section, providing when a party incurring a forfeiture may be relieved therefrom. *Edwards et al. v. Muri*, 73 M 339, 348, 237 P 209.

To entitle a defaulting purchaser to relief from forfeiture under the provisions of this section, he must set forth facts which will appeal to the conscience of a court of equity; hence a complaint intermingling allegations appropriate to an action for rescission of contract and one for breach of it, was properly held insufficient as one for relief from a forfeiture, for failure to allege willingness by plaintiff to do equity even by payment of rent for seven years of occupancy of farm lands, he on the contrary demanding recovery of the whole amount paid defendant, including taxes paid during that time. *Friedrichsen v. Cobb*, 84 M 238, 248, 275 P 267.

While courts are reluctant to enforce forfeitures and conditions involving them must be strictly interpreted against the party for whose benefit they are created, where a purchaser of farm land, under a contract which made time of its essence and provided that in case of default in the payments stipulated for, the purchaser should forfeit his right to possession and all payments made as liquidated damages, remained in possession for ten years without any complaint, and then finding himself unable by reason of conditions beyond his control to meet the final payment, notified the vendor of his inability to make payment and of his desire to surrender the land, whereupon the contract was declared forfeited, his complaint in his action to be relieved of the forfeiture, asking recovery of the difference between the payments made by him under the contract, with taxes, insurance, cost of improvements made by him, etc., and the value of the rental of the property, held insufficient to state facts which appeal to the conscience of a court of equity and therefore insufficient to state a cause of action under this section. *Estabrook v. Sonstelie et al.*, 86 M 435, 439 et seq., 284 P 147.

Where, in an action for the cancellation of a land contract for breach of its conditions by the vendee the vendor does not seek a judgment or forfeiture, but waives any claim to damages and prays only for possession, after default and notice giving ample opportunity to repair the default as provided in the contract, the provision of this section, that where a party incurs a forfeiture by reason of his failure to comply with the provisions of his contract he may be relieved therefrom upon making

full compensation to the other party, has no application. *Huffine v. Lincoln et al.*, 87 M 267, 281, 287 P 629.

When Relief is Proper

A party may be relieved from a forfeiture under this section upon a showing that he is equitably entitled to such relief, if his breach of duty was not grossly negligent, wilful, or fraudulent. *Cook-Reynolds Co. v. Chipman*, 47 M 289, 302, 133 P 694; *Fratt v. Daniel-Jones Co.*, 47 M 487, 500, 133 P 700.

One who, after making advance payments on a contract of sale of personalty, refuses to complete the transaction, the seller being ready and willing to fulfill its stipulations, cannot recover them back, unless he can bring himself within the exception provided by this section, by alleging and proving facts and circumstances upon which, in equity and good conscience, he should have relief from the forfeiture, and which excuse him from the imputation of gross negligence, or wilful or fraudulent breach of duty. *Clifton v. Willson*, 47 M 305, 311, 132 P 424. See *Donlan v. Arnold*, 48 M 416, 422, 138 P 775.

Notwithstanding the provision in a contract of sale of ranch land that on default of deferred payments all prior payments should be deemed forfeited as rental, the party in default may obtain relief from forfeiture if not guilty of grossly negligent, wilful or fraudulent breach of duty, on presentation of such grounds therefor as appeal to the conscience of a court of equity. *Fontaine v. Lyng et al.*, 61 M 590, 598, 202 P 1112.

Under this section, a person may be relieved against a forfeiture in any case where he sets forth facts which appeal to the conscience of a court of equity. *Estabrook v. Sonstelie et al.*, 86 M 435, 439 et seq., 284 P 147.

Where, in an action in ejectment by the vendors of a tract of land against the vendee for refusal to complete the contract of purchase, the questions raised by the latter regarding the title offered were fairly debatable, but found not meritorious, and the time for making final payment had then expired, the case held one justifying application of the rule for relief against forfeiture under this section. *Williams et al. v. Hefner*, 89 M 361, 380, 297 P 492.

Where a purchaser of realty on deferred payments relied on a supposed breach of a contract of sale by the vendor, based on a fairly debatable point, and mistakenly

refused to make further payments, in an action by the vendor to terminate the contract with forfeiture of payments, equity properly relieved purchaser from such forfeiture. *Huston v. Vollenweider et al.*, 101 M 156, 163, 53 P 2d 112.

Where the vendee of county-owned property was in default in payments on principal and taxes under his contract of purchase dated November 1934, making time of its essence, the county, in 1940, after notice and declaration of forfeiture, brought suit to quiet title, held, that in view of defendant's tender of the full amount of delinquent payments, interest and taxes at the trial, and of the difficulty for the average person to make loans due to economic conditions, and in the absence of circumstances which would have rendered relief inequitable, the trial court erred in denying relief from forfeiture under this section. *Yellowstone County v. Wight*, 115 M 411, 416, 145 P 2d 516.

Under a lease arrangement whereby the tenant agreed to pay a percentage of the sales over \$270,000, in addition to a stipulated monthly rent, and the lease provided for a forfeiture in the event of a breach, the court could give relief against forfeiture under this special statute upon the tenant making full compensation where the forfeiture was claimed on the fact that the tenant did not pay a percentage of the sales of farm implements which were kept in a separate building, although all the sales were made and money received at the leased premises and a controversy arose as to whether such sales should be included in that amount upon which a percentage was paid as rent. *Gamble-Skogmo Inc. v. McNair Realty Co.*, 98 F Supp 440, 444.

Where Not Applicable

This section held not applicable where option to purchase did not create an obligation on part of holder of option, and option had been terminated at time of commencement of action involving option. *Northern Mining Corporation v. Cooke Mining Co.*, 123 F 2d 9, 13.

References

Dietz v. Rabe, 65 M 500, 211 P 343; *Nangle v. Northern Pacific Ry. Co. et al.*, 96 M 512, 521, 32 P 2d 11; *Lewis v. Peterson*, 127 M 474, 267 P 2d 127, 128.

Collateral References

Contracts—318.
17 C.J.S. Contracts § 473.

CHAPTER 2

COMPENSATORY RELIEF—DAMAGES—INTEREST—EXEMPLARY DAMAGES

- Section 17-201. Person suffering detriment may recover damages.
 17-202. Detriment defined.
 17-203. Injuries resulting or probable after suit brought.
 17-204. Person entitled to recover damages may recover interest thereon.
 17-205. In actions other than contract.
 17-206. Limit of rate by contract.
 17-207. Acceptance of principal waives claim to interest.
 17-208. Exemplary damages—in what cases allowed.

17-201. (8659) Person suffering detriment may recover damages.

Every person who suffers detriment from the unlawful act or omission of another may recover from the person in fault a compensation therefor in money, which is called damages.

History: En. Sec. 4270, Civ. C. 1895; re-en. Sec. 6040, Rev. C. 1907; re-en. Sec. 8659, R. C. M. 1921. Cal. Civ. C. Sec. 3281. Field Civ. C. Sec. 1832.

Amount and Extent of Damage Must Be Proved

Under this section, one injured through the unlawful act of another may recover compensation by way of damages which directly flow from the act of the person causing them; but to justify such recovery there must be proof of the extent and amount of the damages claimed. Recovery is limited to the amount pleaded. A car owner, deprived of it unlawfully, is entitled to the value of its use less depreciation if he desired to use it; if he wanted to sell it, depreciation by age is the proper measure of damages. *Rigney v. Swingley*, 112 M 104, 110, 113 P 2d 344.

Lump Sum Damages, Apportionment Unauthorized

In the absence of statute authorizing a jury to apportion compensatory damages against joint tort-feasors, damages must be assessed in one sum against those found liable; but where the jury in its verdict finds a lump sum and then attempts to divide it among certain of the defendants, the division should be stricken out as surplusage and judgment entered for the lump sum, or the verdict should be sent back to the jury with instruction to correct it. The jury may apportion exemplary damages between joint tort-feasors if actual damages have been assessed. *Bowman v. Lewis*, 110 M 435, 438, 102 P 2d 1.

Malicious Prosecution

In action for malicious prosecution where jury finds for plaintiff, he is entitled to damages. *Fauver v. Wilkoske*, 123 M 228, 211 P 2d 420, 423, 17 ALR 2d 518.

Measure of Damages

The measure of damages for wrongfully procuring the appointment of a receiver

for a going and solvent corporation is the amount which will afford compensation for the detriment proximately caused by defendants' wrongful act, which, in case of the wrongful conversion of personal property, is presumed to be the value of the property at the time of conversion, with interest from that time, or the highest market value of the property at any time between conversion and the verdict, without interest, and a fair compensation for the time and money properly expended in pursuit of the property. *Thornton-Thomas Co. v. Bretherton*, 32 M 80, 98, 80 P 10.

It is not the theory of our code, as evidenced by this section, and sections 17-202, 17-401 and 17-404, that substantial damage suffered by one through the fault of another shall be unredressed, but that in all such cases the damaged party shall have full compensation. *Chestnut v. Sales*, 49 M 318, 324, 141 P 986.

Operation and Effect

Any person who suffers detriment by reason of another's failure to perform an act imposed by law may recover damages. *Conway v. Monidah Trust*, 47 M 269, 279, 132 P 26.

Where a stranger to a contract without justification induces a party thereto to break it, he is responsible in damages to the other party to it. *Simonsen v. Barth et al.*, 64 M 95, 100, 208 P 938; *Burden v. Elling State Bank*, 76 M 24, 30, 245 P 958.

In action against foreign corporation and its resident employee, who was joined as John Doe, was not served with process and did not appear, for injuries sustained by customer who tripped over orange crate which had been allegedly placed in aisle of corporation's store by employee, the test for removal of cause to federal court on diversity of citizenship was whether employee had any real connection with controversy; a resident citizen, properly joined, is not merely a nominal party who can be ignored because not served or has

not appeared; held, that corporation not entitled to have action removed on ground of diversity of citizenship. *Jensen v. Safeway Stores, Inc.*, 24 F Supp 585.

Under this section, and sections 92-201, 93-2810 and 93-2824, the widow of an employee insured under Plan 3 of the workmen's compensation act and killed in the performance of his duties, after being awarded compensation under the facts stated, had the right, as heir and administratrix, to bring a negligence action against the driver of the car which killed her husband and employ an attorney to conduct the case, the latter being given a first lien upon his client's cause of action by section 93-2120, which cannot be affected by any settlement between the parties before or after judgment. *Hardware Mutual Casualty Co. v. Butler*, 116 M 73, 80, 148 P 2d 563.

Rental Value

Fact that plaintiff had closed its gasoline filling station entirely because of lack of business prior to its occupancy by defendant would not prove that the property had no rental value. *Pritchard Petroleum Co. v. Farmers Co-op. Oil & Supply Co.*, 121 M 1, 190 P 2d 55, 59.

Value of the Use

The value of the use is the value to the owner of the property, not the value to the wrongdoer. *Pritchard Petroleum Co. v. Farmers Co-op. Oil & Supply Co.*, 121 M 1, 190 P 2d 55, 58.

The value of the use is ordinarily held to be the reasonable rental value of the premises withheld. *Pritchard Petroleum Co. v. Farmers Co-op. Oil & Supply Co.*, 121 M 1, 190 P 2d 55, 58.

In action to recover the value of the use and occupancy of a tract of land which had been used as a filling station it was proper to sustain objection to testimony as to the value of the use of land with respect to each gallon of gasoline and each pound of grease sold, since it is not the withholder's gain but the rental value that measures the compensation. *Pritchard Petroleum Co. v. Farmers Co-op. Oil & Supply Co.*, 121 M 1, 190 P 2d 55, 59.

References

Cited or applied as section 6040, Revised Codes, in *Freund v. Murray*, 39 M 539, 553, 104 P 683; *Clifton v. Willson*, 47 M 305, 310, 132 P 424; *Griffin v. Chicago etc. Ry. Co. et al.*, 67 M 386, 392, 216 P 765; *Tucker v. Missoula Light & Ry. Co. et al.*, 77 M 91, 98, 250 P 11; *Galbreath v. Arm-*

strong, 121 M 387, 193 P 2d 630, 633; *Welsh v. Roehm*, 125 M 517, 241 P 2d 816, 819.

Collateral References

Action—16; Damages—1 and other particular topics.

1 C.J.S. Actions § 3; 25 C.J.S. Damages § 1.

15 Am. Jur. 397, Damages, §§ 9 et seq.

Propriety of taking income tax liability in due consideration in fixing damages for impairment of earning capacity. 9 ALR 2d 320.

Loss of profits of a business in which plaintiff is interested as a factor in determining damages for impairment of earning capacity in action for personal injuries. 12 ALR 2d 288.

Changes in cost of living or in purchasing power of money as affecting damages for personal injuries or death. 12 ALR 2d 611.

Hospitalization or medical insurance as affecting damages recoverable for injury or death. 13 ALR 2d 355.

Measure and elements of damages for personal injury resulting in death of infant. 14 ALR 2d 485.

Elements measure of damages for procuring breach of contract. 26 ALR 2d 1272.

Recovery from mental shock or distress in connection with injury or interference with tangible property. 28 ALR 2d 1070.

Damages in action by insured against insurance broker or agent in respect to procurement, continuance, terms, in coverage of insurance policies. 29 ALR 2d 203.

Damages for violation of re-employment rights of discharged servicemen. 29 ALR 2d 1335.

Exemplary damages in action for tenant's failure to surrender possession of rented premises. 32 ALR 2d 611.

Pain and suffering of parent on account of personal injury to infant as recoverable item of damages. 32 ALR 2d 1078.

Purchaser's use or attempted use of articles known to be defective as affecting damages recoverable for breach of warranty. 33 ALR 2d 511.

Measure of damages for loss of or interference with lateral support. 36 ALR 2d 1253.

Cost of hiring substitute or assistant during incapacity of injured party as proof of damages for loss of time in action for personal injury. 37 ALR 2d 370.

Damages recoverable from insured for failure or delay in making payments due under contract. 37 ALR 2d 538.

17-202. (8660) Detriment defined. Detriment is a loss or harm suffered in person or property.

History: En. Sec. 4271, Civ. C. 1895; re-en. Sec. 6041, Rev. C. 1907; re-en. Sec. 8660, R. C. M. 1921. Cal. Civ. C. Sec. 3282. Field Civ. C. Sec. 1833.

References

Cited or applied as section 6041, Revised Codes, in *Clifton v. Willson*, 47 M 305,

310, 132 P 424; *Chestnut v. Sales*, 49 M 318, 324, 141 P 986.

Collateral References

Damages⇒1.

25 C.J.S. Damages § 1.

17-203. (8661) Injuries resulting or probable after suit brought. Damages may be awarded, in a judicial proceeding, for detriment resulting after the commencement thereof, or certain to result in the future.

History: En. Sec. 4272, Civ. C. 1895; re-en. Sec. 6042, Rev. C. 1907; re-en. Sec. 8661, R. C. M. 1921. Cal. Civ. C. Sec. 3283. Field Civ. C. Sec. 1834.

Operation and Effect

Under this section proof of damages may extend to all facts which occur and grow out of the injury after the commencement of the action and up to the date of trial. *Kornec v. Mike Horse Min-*

ing and Milling Co., 120 M 1, 180 P 2d 252, 260.

Id. In action for assault and battery if injury to eye and ear developed after the commencement of the action, evidence as to such injuries was admissible.

Collateral References

Damages⇒26, 225 and other particular topics.

25 C.J.S. Damages §§ 29, 193.

17-204. (8662) Person entitled to recover damages may recover interest thereon. Every person who is entitled to recover damages certain, or capable of being made certain by calculation, and the right to recover which is vested in him upon a particular day, is entitled also to recover interest thereon from that day, except during such time as the debtor is prevented by law, or by the act of the creditor, from paying the debt.

History: En. Sec. 4280, Civ. C. 1895; re-en. Sec. 6043, Rev. C. 1907; re-en. Sec. 8662, R. C. M. 1921. Cal. Civ. C. Sec. 3287. Field Civ. C. Sec. 1835.

of interest under sections 58-423 and 58-427. *Federal Land Bank of Spokane v. Green*, 108 M 56, 66, 90 P 2d 489.

Allowed from Date of Court Decision

Where a mechanics' lien claimant considerably overstated the amount of his claim in the lien filed, so that it required the judgment of the court in an action to foreclose the lien to decide the correct amount due, interest—a creature of statute—was allowable only from the date of the decision, and the court in allowing it from the date of the completion of the work committed error. *Eskestrand v. Wunder*, 94 M 57, 66, 20 P 2d 622.

Conversion

This section does not alter the statutory damages for conversion as prescribed by section 17-404. *Galbreath v. Armstrong*, 121 M 387, 193 P 2d 630, 633.

Mechanic's and Materialman's Liens, After Judgment

A materialman, who secured judgment for the enforcement of his lien, was entitled to interest under this section on the entire amount thereof notwithstanding he had overstated the amount, where the correct amount was readily ascertainable by consulting the owner, and there was no offer of payment so as to stop the running

No Demand Necessary When Debtor Knows His Obligations

When a debtor knows what he is to pay, and when he is to pay it, no demand is necessary to start the running of interest from the date the payment should have been made. *W. J. Lake & Co. v. Montana Horse Products Co.*, 109 M 434, 443, 97 P 2d 590.

When Court May Add Interest To Judgment

Where plaintiff (in an action for breach of contract) is entitled to interest under statutory authority as a legal incident to his claim and he asks for interest in his complaint, and his claim is one which is certain or capable of being made certain by calculation, then the court may add the interest to the judgment when there is no controversy on the facts giving rise to the right to interest which should have been, but was not, submitted to the jury. *W. J. Lake & Co. v. Montana Horse Products Co.*, 109 M 434, 441, 97 P 2d 590.

When Interest Shall Be Allowed

This section authorizes a recovery of interest on an open account from demand,

and the institution of a suit on an open account for goods sold is a demand. *Hef-ferlin v. Karlman*, 29 M 139, 147, 148, 74 P 201. See also *Clifton-Applegate-Toole v. Drain* Dist. No. 1, 82 M 312, 335, 267 P 207.

Where plaintiff gave defendant an option to buy a mine, but, before the payment agreed upon became due, denied the existence of the contract and sued to recover the property, he was not entitled to interest on the purchase money, on specific performance being decreed against him, for the reason that he himself prevented defendant from making the payments. *Finlen v. Heinze*, 32 M 354, 390, 80 P 918.

Interest on a balance due a physician for medical services seems to be properly allowable, under this section, in an action to recover such balance. *Leggat v. Gerriek*, 35 M 91, 95, 88 P 788.

Interest was properly allowed on the amount awarded an employee, suing for services rendered under an oral agreement. *Albertini v. Linden*, 45 M 398, 400, 123 P 400.

If a person with money in a bank, part of which is subject to check, the remainder being shown by a pass-book, is indebted on a note to the bank in excess of the amount of such money, the effect of the suspension and declared insolvency of the bank is to make the deposits due and actionable; the depositor is, therefore, entitled to interest on the deposits from the time that the bank's doors were closed until the date of the judgment on the note. *Williams v. Johnson*, 50 M 7, 21, 144 P 768.

17-205. (8663) In actions other than contract. In an action for the breach of an obligation not arising from contract, and in every case of oppression, fraud, or malice, interest may be given, in the discretion of the jury.

History: En. Sec. 4281, Civ. C. 1895; re-en. Sec. 6044, Rev. C. 1907; re-en. Sec. 8663, R. C. M. 1921. Cal. Civ. C. Sec. 3288. Field Civ. C. Sec. 1836.

Assignable Interest

The right to recover damages for the negligent destruction of property by fire, together with interest recoverable in the discretion of the jury under this section, is assignable, and passes by subrogation to an insurance company to the extent of the proportion of the loss paid by it to the owner of the property destroyed. *Caledonia Ins. Co. v. Northern Pacific Ry. Co.*, 32 M 46, 48, 79 P 544. See *Gaugler v. Chicago, M. & P. S. Ry. Co.*, 197 Fed 79, 83.

Jury Must Be Instructed on Interest

While under this section, interest may be allowed in an action for damages to

Where a creditor of an insolvent bank is forced to bring suit to enforce the statutory liability of a stockholder he is entitled to interest on his claim from the time of the commencement of the action, even though the interest, when added to the principal, exceeds the amount of the liability fixed by the statute. *Mitchell v. Banking Corp. of Montana*, 94 M 165, 177, 22 P 2d 175.

As respects liability of contractor's surety, subcontractors were entitled to interest from date of completion of services rendered under fixed price contract. *American Surety Co. of New York v. Cove Irr. Dist.*, 54 F 2d 197.

Id. Subcontractors held not entitled to interest on quantum meruit claim from principal contractor or its surety before judgment determining such claim.

References

Cited or applied in *McGrath v. Dubs*, 127 M 101, 257 P 2d 899, 906.

Collateral References

Damages—66-69; Interest—19 and other particular topics.

25 C.J.S. Damages §§ 51, 100; 47 C.J.S. Interest § 19.

15 Am. Jur. 577, Damages, §§ 159 et seq.

Recovery by contractor or artisan, suing for breach of warranty, of damages for loss of future profits occasioned by use in his business of unfit materials. 28 ALR 2d 591.

What items of damages on account of personal injury to infant belong to him and what to parent. 32 ALR 2d 1060.

livestock shipments due to the carriers' negligence, the jury should be instructed that the question of interest is left to their discretion, and refusal to so instruct is error. *Phelps et al. v. Great Northern Ry. Co.*, 66 M 198, 220, 213 P 610.

Operation and Effect

In an action against a railroad company for the value of livestock killed on the track, the plaintiff, if successful, has a statutory right to interest. *Dewell v. Northern Pacific Ry. Co.*, 54 M 350, 359, 170 P 752.

In an action for damages against a city caused to plaintiff's property by the grading of a street, the jury may, in their discretion, allow interest on the amount awarded from the time of the completion of the work, under this section. *Wright et al. v. City of Butte*, 64 M 362, 372, 210 P 78.

Under this section, providing that in an action for the breach of an obligation not arising from contract, interest may be awarded in the discretion of the jury, interest may be allowed on amount awarded in an action for death caused by the negligence, especially where the damages awarded do not include compensation for suffering extending for an indefinite period after the injury, but the time of the accrual of the right is fixed by death from which date interest may run. *Burns v. Eminger*, 84 M 397, 410, 276 P 437.

Held, that this section, authorizing the jury "in an action for the breach of an obligation not arising from contract," and in certain others, to award interest in their verdict, while applicable in actions for the destruction of property, has no application to personal injury actions. *Daly v. Swift & Co.*, 90 M 52, 66, 68, 300 P 265.

17-206. (8664) Limit of rate by contract. Any legal rate of interest stipulated by a contract remains chargeable after a breach thereof, as before, until the contract is superseded by a verdict or other new obligation.

History: En. Sec. 4282, Civ. C. 1895; re-en. Sec. 6045, Rev. C. 1907; re-en. Sec. 8664, R. C. M. 1921. Cal. Civ. C. Sec. 3289. Field Civ. C. Sec. 1837.

Cross-Reference

Maximum rate of interest by agreement, sec. 47-125.

17-207. (8665) Acceptance of principal waives claim to interest. Accepting payment of the whole principal, as such, waives all claim to interest.

History: En. Sec. 4283, Civ. C. 1895; re-en. Sec. 6046, Rev. C. 1907; re-en. Sec. 8665, R. C. M. 1921. Cal. Civ. C. Sec. 3290. Field Civ. C. Sec. 1838.

Operation and Effect

This action has no application to moneys deposited to indemnify sureties on

Held, that chapter 142, Laws of 1925, (84-4502 and 84-4503) providing *inter alia* that when taxes paid under protest may be recovered, recovery shall be had without interest, has no application to an action based on section 84-4176, authorizing refund of a tax "paid more than once," but that in such an action plaintiff is entitled to interest on the unlawful tax from the date of payment, even though plaintiff, to avoid the imputation that the payment made was voluntary, made it under protest. *Williams v. Harvey et al.*, 91 M 168, 173, 6 P 2d 418.

Interest held not allowed on recovery in personal injury action under federal statutes, state statutes not being controlling (this section, and Federal Employers' Liability Act, 45 U. S. C. A., Secs. 51-59).

Collateral References

Interest—39 et seq. and other particular topics.

47 C.J.S. Interest § 41 et seq.

Collateral References

Interest—26; Payment—50.

48 C.J.S. Interest § 29; 70 C.J.S. Payment § 38.

17-208. (8666) Exemplary damages—in what cases allowed. In any action for a breach of an obligation not arising from contract, where the defendant has been guilty of oppression, fraud, or malice, actual or presumed, the jury, in addition to the actual damages, may give damages for the sake of example, and by way of punishing the defendant.

History: En. Sec. 4290, Civ. C. 1895; re-en. Sec. 6047, Rev. C. 1907; re-en. Sec. 8666, R. C. M. 1921. Cal. Civ. C. Sec. 3294. Field Civ. C. Sec. 1839.

Apportionment Between Joint Tortfeasors

The jury may properly apportion exemplary damages among joint tortfeasors in a conversion action, but before a finding of such damages may be made, actual damages must have been assessed, and where exemplary damages only were as-

sessed against one of the defendants, reversal of the judgment carries with it the award of costs against such defendants. *Bowman v. Lewis*, 110 M 435, 438, 102 P 2d 1.

Assault and Battery—Malice, Test for Damages

In an assault case where malice is alleged it is not the quantum of force used but whether the assailant was in a malicious state of mind which is the test in awarding exemplary damages; the use of

a dangerous weapon (a hammer) is some evidence of a wanton disregard of human life and generally gives rise to such damages; the question of malice is generally one for the jury. *Vaughn v. Mesch*, 107 M 498, 508, 87 P 2d 177.

Exemplary Damages Not Recoverable Unless There is Actual Damage

Before exemplary damages may be awarded, actual damages must first be found to have been suffered. *Gilham v. Devereaux*, 67 M 75, 78, 214 P 606.

Id. Under the above rule, in a husband's action for damages for alienation of affections, where the jury expressly found that plaintiff had not suffered any actual damages, an award of \$2,000 exemplary damages was unwarranted.

Exemplary Damages Should Be Separately Stated

Where in an action in claim and delivery exemplary damages were not authorized upon any theory, and the jury allowed \$500 damages in a lump sum without designating what part was intended as actual and what part as punitive damages, the cause will be remanded for a new trial, it being impossible to determine from the verdict the amount intended to be allowed as damages by way of punishment. *Luther v. Lee et al.*, 62 M 174, 204 P 365.

Malice Actual or Presumed

In an action in conversion in which exemplary damages were asked, an instruction defining the terms "actual" and "presumed" malice, held not open to the objection that it authorized an award of punitive damages for malice in law as well as malice in fact. *Wray v. Great Falls Paper Co.*, 72 M 461, 465, 234 P 486.

Malice in Law

"Malice in law" justifying an award of exemplary damages will be implied where defendant's conduct is unjustifiable. Evidence that overtaking automobile without warning, during severe snowstorm, sought to pass, and in so doing, sideswiped automobile in which accident victim rode would warrant finding that conduct of driver of overtaking automobile was unjustifiable, authorizing an implication of malice, as basis for an award of exemplary damages. *Cherry-Burrell Co. et al. v. Ray C. Thatcher*, 107 F 2d 65, 69.

Matters for Jury to Consider in Assessing

In assessing exemplary damages the jury should take into consideration all the circumstances surrounding the act complained of and may consider the wealth and pecuniary ability of defendant, the matter of fixing the amount resting largely in

its discretion. *Johnson v. Horn*, 86 M 314, 318 et seq., 283 P 427.

The rule that where exemplary damages are sought, the jury may take into consideration the pecuniary ability of defendant to pay, as shown by the evidence, applies in an action against joint tort-feasors; in such a case the jury may make awards of such damages in different amounts according to the various degrees of culpability of each defendant, keeping in mind the financial condition of each. *Edquest v. Tripp & Dragstedt Co. et al.*, 93 M 446, 456, 19 P 2d 637.

Necessity for Actual Damages

Where actual damage is shown although the extent of the damage cannot be shown in money value, exemplary damages may be awarded. *Fauver v. Wilkoske*, 123 M 228, 211 P 2d 420, 426, 17 ALR 2d 518, overruling *Gilham v. Devereaux*, 67 M 75, 214 P 606, 33 ALR 381; *Truzzolino Food Products Co. v. F. W. Woolworth Co.*, 108 M 408, 91 P 2d 415; *Bowman v. Lewis*, 110 M 435, 102 P 2d 1.

Where actual damages appear from the evidence, an award of punitive or exemplary damages will stand, though the verdict of the jury shows no finding of actual damages. *Brown v. Grenz*, 127 M 49, 257 P 2d 246, 248.

Necessity for Actual Damages—Verdict

In action for malicious prosecution where jury found malice verdict was valid where they gave exemplary damages but entered "none" in the space on the verdict for actual damages. *Fauver v. Wilkoske*, 123 M 228, 211 P 2d 420, 423, 17 ALR 2d 518.

Not Necessary to Claim Eo Nomine

To entitle plaintiff to recover punitive damages, in an action for malicious prosecution, in addition to those actually sustained, it is not necessary that he claim them eo nomine in his complaint. *Martin v. Corseadden*, 34 M 308, 323, 86 P 33.

In an action for damages for the fraudulent use of a trade-mark, held, that complaint asking exemplary damages need not set them out eo nomine, but must allege that the acts of defendant were characterized by fraud, oppression, malice or the like, under this section; such damages, however, cannot be assessed unless actual damages are awarded by the jury. *Truzzolino Food Products Co. v. F. W. Woolworth Co.*, 108 M 408, 420, 91 P 2d 415.

Presumption That Actual Damages Found When Exemplary Damages Given

When the jury was instructed by the court that it could allow exemplary damages if "you find by a preponderance of

the evidence that plaintiff suffered actual damages," and the jury returned a verdict of actual damages "none" and exemplary damages "\$250," the presumption is that the jury found actual damages. The fact that they did not assess a money award for the actual damages is not controlling for there are various reasons why it did not assess a money award; an obvious one is the existence of a counterclaim by the defendant. *Welsh v. Roehm*, 125 M 517, 241 P 2d 816, 820.

When Exemplary Damages Not Recoverable

Evidence held insufficient to justify an inference of malice, fraud, or oppression in either taking or detaining property in controversy, in an action in conversion; hence the imposition of punitive damages, otherwise recoverable under this section, was unwarranted. *De Celles v. Casey*, 48 M 568, 575, 139 P 586.

Complaint in an action arising out of an automobile collision, alleging that defendant was driving at the rate of 40 miles an hour and on the wrong side of the road, held sufficient to sustain a charge of mere negligence, but insufficient to warrant recovery of exemplary damages. *Thompson v. Shanley*, 93 M 235, 245, 17 P 2d 1085.

When Recoverable

Damages by way of punishment, in addition to those actually sustained, may be recovered in an action against a mining company for the negligent and wrongful killing of plaintiff's intestate, a miner, where the complaint charges that the defendant company was primarily responsible for the death of decedent. *Olsen v. Montana Ore Purchasing Co.*, 35 M 400, 412, 89 P 731.

The complaint in an action for damages for a conversion which alleged, among other things, that defendants "did unlawfully, maliciously, fraudulently, and oppressively take and carry away" the property in controversy, and refused restitution of the same after repeated demands, was broad enough to warrant inquiry into the motives and behavior of defendants, and to justify the giving of an instruction that exemplary damages might be awarded for oppressively, fraudulently, or maliciously withholding the chattels after demand. *Shandy v. MacDonald*, 38 M 393, 401, 100 P 203.

In cases of conversion of personal property, the statute authorized the imposition of punitive damages, where the defendant acted maliciously, fraudulently, or oppressively, either in taking or detaining the property in controversy. *De Celles v. Casey*, 48 M 568, 575, 139 P 586.

In an action against a railway company to recover damages for failure to stop its train at a station where it was scheduled to stop when flagged, punitive, in addition to compensatory, damages may be awarded if it is shown that the engineer saw the signal, but wilfully refused to stop for the purpose of receiving plaintiff as a passenger. *Burles v. Oregon Short Line R. R. Co.*, 49 M 129, 132, 140 P 513. See *Jones v. Shannon*, 55 M 225, 234, 175 P 882.

Where the element of fraud entered into the wrong-doing of a telegraph operator in withholding messages to and from a customer of his company, thus enabling him to profit by it, the provisions of this section, awarding the right to punitive damages, governed, and section 8-822 did not. *Lahood v. Continental Tel. Co.*, 52 M 313, 322, 157 P 639.

Punitive damages may be awarded in an action for the alienation of a husband's affections, even though the evidence furnishes no basis for a finding of malice, since malice may be implied from the conduct of defendant in causing the wrong complained of, its existence being a question for the jury. *Moelleur v. Moelleur*, 55 M 30, 34, 173 P 419.

A hotel proprietor who wrongfully forces an entry into the room of a guest, and without just cause ejects him from it and the house, is liable not only for compensatory, but also exemplary damages, if the ejection is accompanied by circumstances indicating that it was prompted by malice, fraud, or a spirit of oppression. *Jones v. Shannon*, 55 M 225, 229, 175 P 882.

Id. Evidence held sufficient in an action against the proprietor of a public house for the wrongful ejection of a guest, to show that such ejection, done by proprietor's agent, was actuated by a malicious motive.

To warrant the recovery of exemplary damages, defendant must have entertained a guilty intent, the wrongful acts being characterized by circumstances of aggravation, malice, oppression and the like. *Luther v. Lee et al.*, 62 M 174, 204 P 365.

It is within the province of the jury to allow exemplary as well as compensatory damages in an action for malicious prosecution, and unless their determination appears to have been influenced by passion, prejudice or some other improper motive, or the amount is outrageously disproportionate to the wrong done or the situation or circumstances of the parties, the award will not generally be disturbed. *Corrner v. Hamilton*, 62 M 239, 245, 204 P 489.

Where acts constituting a trespass are shown to be wanton, malicious or oppressive and of such a character as to indicate a reckless disregard of the rights of the

plaintiff, the jury in their discretion may award a reasonable amount as punitive damages in addition to compensatory damages. *Mosback v. Smith Brothers Sheep Co.*, 65 M 42, 47, 50, 210 P 910.

Where the jury in an action in conversion found in favor of plaintiff's contention that defendant chattel mortgagee in violation of his agreement extending the time within which plaintiff could pay his debt caused an officer to seize the chattel, thus acting maliciously and oppressively, an award of exemplary damages was justified. *Ramsbacher v. Hohman*, 80 M 480, 488, 261 P 273.

To warrant the recovery of exemplary damages in a tort action the complaint must allege either that the act complained of was done maliciously, wilfully or wantonly, or the facts surrounding its commission must be set forth with such particularity as that one or more of such elements may be inferred therefrom. *Thompson v. Shanley*, 93 M 235, 245, 17 P 2d 1085.

When Supreme Court Will Interfere on Appeal

Unless an alleged excessive award of punitive damages appears to have been influenced by passion, prejudice or some improper motive, or is outrageously disproportionate either to the wrong done or the situation or circumstances of the parties, the supreme court will not generally interfere; there is no established rule to be followed for ascertaining whether such an award is excessive. *Johnson v. Horn*, 86 M 314, 318 et seq., 283 P 427.

References

Cited or applied as section 6047, Revised Codes, in *Freund v. Murray*, 39 M 539, 553, 104 P 683; *Winterscheid v. Reichle*, 45 M 238, 242, 122 P 740; *D'autremont v. McDonald*, 56 M 522, 526, 185 P 707.

Collateral References

Damages \hookrightarrow 87-94.

25 C.J.S. Damages §§ 117-126.

15 Am. Jur. 698, Damages, §§ 265 et seq.

Intoxication of automobile driver as basis for award of punitive damages. 3 ALR 2d 212.

Punitive damages for wrongful ejection or rejection of guest from hotel or restaurant. 14 ALR 2d 715.

Actual damages as a necessary predicate of punitive or exemplary damages. 17 ALR 2d 527.

Exemplary damages for procuring breach of contract. 26 ALR 2d 1274.

Exemplary damages in action for tenant's failure to surrender possession of rented premises. 32 ALR 2d 611.

Exemplary damages on account of personal injury to infant as belonging to him or to parents. 32 ALR 2d 1079.

Ratio of exemplary to actual damages for false imprisonment or arrest. 35 ALR 2d 278.

Extensiveness or inadequacy of damages for alienation of affections or criminal conversation. 36 ALR 2d 551.

Nonstatutory punitive damages as recoverable from insurer for failure or delay in making payments due under contract. 37 ALR 2d 539.

CHAPTER 3

MEASURE OF DAMAGES

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| Section | 17-301. Measure of damages for breach of contract. |
| | 17-302. Damages must be certain. |
| | 17-303. Breach of contract to pay liquidated sum. |
| | 17-304. Detriment caused by breach of covenant of seizin, etc., what is. |
| | 17-305. Detriment caused by breach of covenant against incumbrances, what is. |
| | 17-306. Breach of agreement to convey real property. |
| | 17-307. Breach of agreement to buy real property. |
| | 17-308. Breach of agreement to sell personal property not paid for. |
| | 17-309. Breach of agreement to sell personal property paid for. |
| | 17-310. Breach of agreement to pay for personal property sold. |
| | 17-311. Breach of agreement to buy personal property. |
| | 17-312. Breach of warranty of title to personal property. |
| | 17-313. Breach of warranty of quality of personal property. |
| | 17-314. Breach of warranty of quality for special purpose. |
| | 17-315. Breach of carrier's obligation to receive goods, etc. |
| | 17-316. Breach of carrier's obligation to deliver. |
| | 17-317. Carrier's delay. |
| | 17-318. Breach of warranty of authority. |
| | 17-319. Breach of promise of marriage. |

17-301. (8667) **Measure of damages for breach of contract.** For the breach of an obligation arising from contract, the measure of damages, ex-

cept where otherwise expressly provided by this code, is the amount which will compensate the party aggrieved for all the detriment proximately caused thereby, or which, in the ordinary course of things, would be likely to result therefrom.

History: En. Sec. 4300, Civ. C. 1895; re-en. Sec. 6048, Rev. C. 1907; re-en. Sec. 8667, R. C. M. 1921. Cal. Civ. C. Sec. 3300. Based on Field Civ. C. Sec. 1840.

Allegation of Damages Sufficient as Against a Demurrer

A complaint is sufficient to withstand a general demurrer interposed on the ground that the proper measure of damages was not pleaded, if it warrants recovery in any amount. *Davenport v. Western Union Tel. Co.*, 91 M 570, 579, 9 P 2d 172.

Applicable to Action on Injunction Bond

The measure of damages prescribed by this section is applied in an action on an injunction bond. *Sheridan Elec. Coop. v. Ferguson*, 124 M 543, 227 P 2d 597, 601.

Applicable to Obligations Arising from Contract

The measure of damages in an action for damages for failure of seller to promptly deliver equipment for a plow, resulting in loss by buyer in preventing performance of a plowing contract, is that specified in this section as an obligation arising from contract, and not that provided in section 17-401, as damages arising ex delicto. *Hall v. Advance-Rumley Thresher Co.*, 65 M 566, 575, 212 P 290.

Attorneys' Fees, as Such, Not Recoverable—When Recoverable as Compensatory Damages

Attorneys' fees, as such, are not allowable as part of the damages in an action for breach of contract in the absence of contractual stipulation therefor or statutory allowance thereof, but where a lessee of farm lands in his attempt to obtain possession prior to commencement of action incidentally paid a small amount to an attorney, the amount so paid was properly recoverable as an element of compensatory damages. *Smith v. Fergus County*, 98 M 377, 384, 39 P 2d 193.

Detriment Proximately Caused

Circumstances under which damage to a mining company's credit, destruction of its business, and loss of its property through sales under a judgment secured by employees for wages due at the time an attachment was levied on its real property, was held not to have been the proximate consequences of the attachment, for which the surety on the attachment undertaking could be held liable. *Plymouth*

Gold Min. Co. v. U. S. Fidelity Co., 35 M 23, 30, 88 P 565.

Where parties have been enjoined and the remedy by motion to dissolve is not available to them, and they pursue the only course recognized by the law to rid themselves of the restrictions imposed by the injunction, namely, to defeat it, and they are successful in so doing, the reasonable compensation paid for the services of counsel employed for the special purpose of defeating the injunction is the natural and proximate result of the wrongful issuance of the injunction, and is recoverable under this section, in an action on the bond given under section 93-6809. *McDermott v. American Bonding Co.*, 56 M 1, 8, 179 P 828.

Operation in General

A client's failure to pay an attorney his fee, when it becomes due, is a breach of an obligation arising from contract, and the measure of damages for such breach is the principal amount due at the completion of the services, plus the detriment proximately caused by the client's failure to pay, that is, legal interest for loss of the use of the money from that time up to the date of trial. *Myers v. Bender*, 46 M 497, 508, 129 P 330.

Id. The damages recoverable for the breach of an obligation arising from contract must be limited to such as may fairly be supposed to have been within the contemplation of the parties when they entered into the contract, and such as might naturally be expected to result from its violation. In no case is the plaintiff entitled to recover anything more than he would have received had the contract been performed, by the defendant on his part assuming that it had been performed.

Where full performance of a contract is prevented by the wrongful interference of one party, the other may treat such wrongful act as a breach of the contract, and sue at once for damages arising from his having been prevented from reaping all the benefits and advantages which would reasonably follow a complete performance on his part, and the measure of his recovery would be the difference between the contract price and the expense to him of doing the work. *McFarland v. Welch*, 48 M 196, 198, 136 P 391.

The measure of damages in an action on an injunction bond is the amount which will compensate for all the detriment proximately caused by the injunction during the time it was in operation, or which,

in the ordinary course of things, was likely to result therefrom. *McDermott v. American Bonding Co.*, 56 M 1, 5, 179 P 828.

Id. Where a party is precluded from moving to dissolve an injunction, and is driven to the remedy of trying to defeat the injunction, in which effort he is successful, the necessary court costs and fees of witnesses are a direct result of the wrongful issuance of the injunction, and constitute a recoverable item of damages in an action on the bond given pursuant to section 93-4207.

Damages recoverable for a breach of contract of sale of farm lands are such as may fairly be supposed to have been within the contemplation of the parties when they entered into it and such as might naturally have been expected to result from its breach. *Healy v. Ginoff et al.*, 69 M 116, 124, 220 P 539.

Although defendant was not entitled to retain down payment on land when no binding contract of sale was ever made, he should be allowed to retain so much thereof as would be necessary to compensate him for damage caused by defendant's occupancy of the land. *Fink v. Doggett*, 123 M 324, 214 P 2d 743.

Evidence supported verdict of \$1,000 damages against defendant for his failure to complete contract calling for his drilling of a water well. *Hein v. Fox*, 126 M 514, 254 P 2d 1076, 1079.

17-302. (8668) Damages must be certain. No damages can be recovered for a breach of contract which are not clearly ascertainable in both their nature and origin.

History: En. Sec. 4301, Civ. C. 1895; re-en. Sec. 6049, Rev. C. 1907; re-en. Sec. 8668, R. C. M. 1921. Cal. Civ. C. Sec. 3301. Field Civ. C. Sec. 1841.

Operation and Effect

In an action for breach of contract, a requested instruction that the jury, in fixing damages for non-performance in the future, should make allowance for the uncertainties which affect all conclusions depending on future events, and that only such evidence as was reasonably certain to extend to future events should be considered in fixing damages for non-performance of the contract, was vague and indefinite, and not authorized by this section. *Brazell v. Cohn*, 32 M 556, 562, 563, 81 P 339.

Where, in an action for the breach of a contract, the admitted facts do not show injury, and there is a lack of definite statement by witnesses justifying an inference that the defendant has suffered damage, a claim for damages in a substantial amount is properly considered without foundation in the evidence. *Busbee v. Gagnon Co.*, 50 M 203, 211, 146 P 275.

References

Cited or applied as section 6048, Revised Codes, in *Clifton v. Willson*, 47 M 305, 310, 132 P 424; *General F. E. Co. v. Northwestern A. S. Co.*, 70 M 1, 7, 223 P 504; *Borgeas v. Oregon etc. R. R. Co. et al.*, 73 M 407, 417, 236 P 1069; *Brown v. Homestake Exploration Co.*, 98 M 305, 39 P 2d 168; *Richardson v. Crone*, 127 M 200, 258 P 2d 970, 974 (dissenting opinion).

Collateral References

Damages—117-126 and other particular topics.

25 C.J.S. Damages §§ 73-79, 90, 91.

15 Am. Jur. 442, Damages, §§ 43-64.

Right to recover, in action for breach of contract, expenditures incurred in preparation for performance. 17 ALR 2d 1300.

Exemplary damages for procuring breach of contract. 26 ALR 2d 1274.

Measure of tenant's damages upon landlord's breach of covenant to repair. 28 ALR 2d 480.

Damages in action by insured against insurance broker or agent with respect to procurement, continuance, terms, and coverage of insurance policies. 29 ALR 2d 203.

Damages recoverable for insurer for failure or delay in making payments due under contract. 37 ALR 2d 538.

The measure of damages recoverable in an action for breach of contract under which defendant was required to sow a tract of land in grain, etc., was such reasonable amount, clearly ascertainable in both nature and origin, as to compensate plaintiff for the damages resultant, and such additional amount as in the ordinary course of things would likely result from the breach. *Harrington et al. v. Morre Land Co.*, 59 M 421, 423, 196 P 975.

Under this section, no damages can be recovered for a breach of contract which are not clearly ascertainable in both their nature and origin. *Rocky Mountain Fire Ins. Co. v. Belcher*, 96 M 409, 415, 31 P 2d 316.

Profits—When Recoverable and When Not

Under this section, profits which are a mere matter of speculation cannot be made the basis of recovery in a suit for breach of contract; otherwise where the profits can be shown to have been reasonably certain. *Jurcec v. Raznik*, 104 M 45, 50, 64 P 2d 1076.

References

Lewis and Clark County v. Nett, 81 M 261, 269, 263 P 418; Brown v. Homestake Exploration Co., 98 M 305, 39 P 2d 168.

Collateral References

Damages⇒6 and other particular topics.
25 C.J.S. Damages § 28.

17-303. (8669) Breach of contract to pay liquidated sum. The detriment caused by the breach of an obligation to pay money only is deemed to be the amount due by the terms of the obligation, with interest thereon.

History: En. Sec. 4302, Civ. C. 1895; re-en. Sec. 6050, Rev. C. 1907; re-en. Sec. 8669, R. C. M. 1921. Cal. Civ. C. Sec. 3302. Field Civ. C. Sec. 1842.

References

Miller v. Yellowstone Irr. Dist., 91 M 538, 541, 9 P 2d 795.

17-304. (8670) Detriment caused by breach of covenant of seizin, etc., what is. The detriment caused by the breach of a covenant of "seizin," of "right to convey," of "warranty," or of "quiet enjoyment," in a grant of an estate in real property, is deemed to be:

1. The price paid to the grantor; or, if the breach is partial only, such proportion of the price as the value of the property affected by the breach bore at the time of the grant to the value of the whole property.

2. Interest thereon for the time during which the grantee derived no benefit from the property, not exceeding five years.

3. Any expenses properly incurred by the covenantee in defending his possession.

History: En. Sec. 4304, Civ. C. 1895; re-en. Sec. 6052, Rev. C. 1907; re-en. Sec. 8670, R. C. M. 1921. Cal. Civ. C. Sec. 3304. Based on Field Civ. C. Sec. 1844.

Collateral References

Covenants⇒124-132.

21 C.J.S. Covenants §§ 142-150.

14 Am. Jur., Covenants, Conditions and Restrictions, p. 593, §§ 168-177; p. 605, § 188.

Remedy of tenant against stranger wrongfully interfering with his possession. 12 ALR 2d 1192.

References

Healy v. Ginoff et al., 69 M 116, 124, 220 P 539.

17-305. (8671) Detriment caused by breach of covenant against incumbrances, what is. The detriment caused by the breach of a covenant against incumbrances, in a grant of an estate in real property, is deemed to be the amount which has been actually expended by the covenantee in extinguishing either the principal or interest thereof, not exceeding in the former case a proportion of the price paid to the grantor equivalent to the relative value at the time of the grant of the property affected by the breach, as compared with the whole, or, in the latter case, interest on a like amount.

History: En. Sec. 4305, Civ. C. 1895; re-en. Sec. 6053, Rev. C. 1907; re-en. Sec. 8671, R. C. M. 1921. Cal. Civ. C. Sec. 3305. Field Civ. C. Sec. 1845.

17-306. (8672) Breach of agreement to convey real property. The detriment caused by the breach of an agreement to convey an estate in real property is deemed to be the price paid, and the expenses properly incurred in examining the title and preparing the necessary papers, with interest thereon; but adding thereto, in case of bad faith, the difference between the price agreed to be paid and the value of the estate agreed to be conveyed, at the time of the breach, and the expenses properly incurred in preparing to enter upon the land.

History: En. Sec. 4306, Civ. C. 1895; re-en. Sec. 6054, Rev. C. 1907; re-en. Sec. 8672, R. C. M. 1921. Cal. Civ. C. Sec. 3306. Field Civ. C. Sec. 1846.

Damage Where Bad Faith is Not Alleged

Plaintiff having failed to allege bad faith, in an action to recover the amount paid by him to secure title to real estate, after discovering that defendant was unable to convey, the measure of damages was the amount paid to defendant on the purchase price, together with incidental expenses. *Willard v. Smith*, 34 M 494, 498, 87 P 613.

"Expenses Properly Incurred"

In an action to recover damages for the breach of an agreement to convey real property, situated in another state, expenses incurred by the plaintiff in removing his family to that state, preparatory to taking possession of the lands sold to him by the defendant, as well as counsel fees and court costs paid by the plaintiff in defending an action to quiet title, brought against him by the defendant's prior grantee, are recoverable under this section as "expenses properly incurred in preparing to enter upon the land." *Ross v. Saylor*, 39 M 559, 570, 104 P 864.

Id. Where the jury returned a verdict "for necessary expenses in preparing to take possession of the land," while the court in its instruction employed the words of the statute, "expenses properly incurred," there was no substantial difference between the two expressions, and the verdict was sufficient, in the absence of an objection thereto at the trial.

Kind of Agreement

This section applies to an agreement to convey an equitable as well as a legal estate. *Ross v. Saylor*, 39 M 559, 565, 104 P 864.

Lease of Building Under Construction

Under contract to lease a building under construction, the proper measure of damages is the difference between the price agreed to be paid as rent and the reason-

able value of the term agreed upon at the time of the breach, and any expenses properly incurred by plaintiff in preparing to take possession in reliance on the agreement. *Jurcee v. Raznik*, 104 M 45, 51, 64 P 2d 1076.

Prompt Declaration of Termination Necessary or Option on Notice Deemed Waived

Under an installment contract for sale of real property, making time of its essence, and providing that in case of default on any installment the vendor shall have the option to declare the contract terminated, such option must be promptly exercised or failure of timely payment is presumed waived and the contract still valid, and if it provides for 30-day notice to terminate it, the giving thereof is essential to the exercise of the option for its termination. *Thompson v. Lincoln National Life Insurance Co.*, 110 M 521, 523, 105 P 2d 683.

When Anticipated Profits Not Recoverable—New Venture

Anticipated profits from an established business are recoverable upon showing prior profits in the same location, but where plaintiff was about to embark on a new business venture when prevented by lessor's wrongful act in leasing the premises to another, they may not be made the basis of an action for breach of contract, since it cannot be proved what the profits would have been. *Jurcee v. Raznik*, 104 M 45, 50, 64 P 2d 1076.

References

Thompson v. Lincoln National Life Ins. Co., 114 M 521, 534, 138 P 2d 951.

Collateral References

Vendor and Purchaser—351.

66 C.J. Vendor and Purchaser § 1700 et seq.

55 Am. Jur. 945, Vendor and Purchaser, §§ 553 et seq.

Specific performance: Compensation or damages awarded purchaser for delay in conveyance of land. 7 ALR 2d 1204.

17-307. (8673) Breach of agreement to buy real property. The detriment caused by the breach of an agreement to purchase an estate in real property is deemed to be the excess, if any, of the amount which would have been due to the seller, under the contract, over the value of the property to him.

History: En. Sec. 4307, Civ. C. 1895; re-en. Sec. 6055, Rev. C. 1907; re-en. Sec. 8673, R. C. M. 1921. Cal. Civ. C. Sec. 3307. Field Civ. C. Sec. 1847.

Collateral References

Vendor and Purchaser—330.

66 C.J. Vendor and Purchaser § 1539.

55 Am. Jur. 900, Vendor and Purchaser, §§ 509 et seq.

17-308. (8674) Breach of agreement to sell personal property not paid for. The detriment caused by the breach of a seller's agreement to deliver personal property, the price of which has not been fully paid in advance, is deemed to be the excess, if any, of the value of the property to the buyer, over the amount which would have been due to the seller under the contract, if it had been fulfilled.

History: En. Sec. 4308, Civ. C. 1895; re-en. Sec. 6056, Rev. C. 1907; re-en. Sec. 8674, R. C. M. 1921. Cal. Civ. C. Sec. 3308. Field Civ. C. Sec. 1848.

Operation and Effect

Under this section and section 6082, R. C. M. 1921 (since repealed), evidence that the market price of hay purchased by plaintiff, at time and place of delivery, was in excess of the contract price was sufficient to entitle it to substantial damages for defendant's failure to deliver it, even though plaintiff's evidence did not show that it suffered actual damage by having to go into the open market and purchase hay to fill its own contracts or supply its own needs. *Sturm & Drake v. Roberts Elevator Co.*, 60 M 239, 241, 198 P 545.

Where no down payment is made on a

contract for the purchase of personal property, but its market value has risen between the time fixed for and the date of delivery, the injured party may, in case of breach of contract by the seller, recover the difference between the contract price and the market price; where a down payment is made, it is recoverable in addition to such difference. *Evankovich v. Howard Pierce, Inc.*, 91 M 344, 353, 8 P 2d 653.

References

Whitelaw v. Vallance et al., 60 M 172, 176, 198 P 449.

Collateral References

Sales ⇨ 418.

78 C.J.S. *Sales* § 540 et seq.

46 Am. Jur. 799, *Sales*, §§ 676 et seq.

17-309. (8675) Breach of agreement to sell personal property paid for. The detriment caused by the breach of a seller's agreement to deliver personal property, the price of which has been fully paid to him in advance, is deemed to be the same as in case of wrongful conversion.

History: En. Sec. 4309, Civ. C. 1895; re-en. Sec. 6057, Rev. C. 1907; re-en. Sec. 8675, R. C. M. 1921. Cal. Civ. C. Sec. 3309. Field Civ. C. Sec. 1849.

17-310. (8676) Breach of agreement to pay for personal property sold. The detriment caused by the breach of a buyer's agreement to accept and pay for personal property, the title to which is vested in him, is deemed to be the contract price.

History: En. Sec. 4310, Civ. C. 1895; re-en. Sec. 6058, Rev. C. 1907; re-en. Sec. 8676, R. C. M. 1921. Cal. Civ. C. Sec. 3310. Field Civ. C. Sec. 1850.

Collateral References

Sales ⇨ 384.

78 C.J.S. *Sales* § 477 et seq.

References

United States v. S. Birch & Sons Const. Co. et al., 43 F Supp 726.

17-311. (8677) Breach of agreement to buy personal property. The detriment caused by the breach of a buyer's agreement to accept and pay for personal property, the title to which is not vested in him, is deemed to be:

1. If the property has been resold, pursuant to section 45-1104, the excess, if any, of the amount due from the buyer, under the contract, over the net proceeds of the resale; or,

2. If the property has not been resold in the manner prescribed by section 45-1104, the excess, if any, of the amount due from the buyer, under the contract, over the value to the seller, together with the excess, if any, of the expenses properly incurred in carrying the property to market,

over those which would have been incurred for the carriage thereof, if the buyer had accepted it.

History: En. Sec. 4311, Civ. C. 1895; re-en. Sec. 6059, Rev. C. 1907; re-en. Sec. 8677, R. C. M. 1921. Cal. Civ. C. Sec. 3311. Field Civ. C. Sec. 1851.

Operation and Effect

Where defendants broke a contract to purchase all of plaintiff's milk at wholesale for a specified price per gallon for five years, plaintiff was not thereafter required to change the character of his business, and sell his milk at retail, in order to reduce his damages. *Brazell v. Cohn*, 32 M 556, 567, 81 P 339.

An offer to perform having been wrongfully rejected by plaintiff, defendant could rightfully set up a counter-claim for the difference between the contract price

and the value of the barley to him, together with the excess of expenses, properly incurred in carrying it to market, over those which would have been incurred if plaintiff had accepted it, without alleging that he had elected to avail himself of either option given him under this section. *Lehrkind v. McDonnell*, 51 M 343, 350, 153 P 1012.

References

Cited or applied as section 6059, Revised Codes, in *Welch v. Nichols*, 41 M 435, 441, 110 P 89; *Wipe v. Kelleher*, 58 M 87, 89, 190 P 294; *United States v. S. Birch & Sons Const. Co. et al.*, 43 F Supp 726.

Collateral References

46 Am. Jur. 746, Sales, §§ 615 et seq.

17-312. (8678) Breach of warranty of title to personal property. The detriment caused by the breach of a warranty of the title of personal property sold is deemed to be the value thereof to the buyer, when he is deprived of its possession, together with any costs which he has become liable to pay in an action brought for the property by the true owner.

History: En. Sec. 4312, Civ. C. 1895; re-en. Sec. 6060, Rev. C. 1907; re-en. Sec. 8678, R. C. M. 1921. Cal. Civ. C. Sec. 3312. Field Civ. C. Sec. 1852.

Operation and Effect

The measure of damages for breach of warranty of title to a brick building sold as personal property and situated on land owned by a third person is that set forth in this section and section 17-602, including the element of cost of removal, if removal was necessary, etc. *Lewis v. Lampros*, 65 M 366, 369, 211 P 212.

References

Courtney v. Gordon, 74 M 408, 415, 241 P 233; *Heffron v. Thomas et al.*, 61 M 10, 13, 201 P 572.

17-313. (8679) Breach of warranty of quality of personal property. The detriment caused by the breach of a warranty of the quality of personal property is deemed to be the excess, if any, of the value which the property would have had at the time to which the warranty referred, if it had been complied with, over its actual value at that time.

History: En. Sec. 4313, Civ. C. 1895; re-en. Sec. 6061, Rev. C. 1907; re-en. Sec. 8679, R. C. M. 1921. Cal. Civ. C. Sec. 3313. Field Civ. C. Sec. 1853.

Application

This section is not the basis for the measure of damages when the action arose because plaintiff's sheep died after eating feed sold by the defendant. Rather, sec-

Collateral References

Sales 442.

77 C.J.S. Sales § 385.

46 Am. Jur. 882, Sales, § 754.

Measure of damages in action for breach of warranty of title to personal property as the value of the property or the price plus interest. 13 ALR 2d 1372.

Purchaser's use or attempted use of articles known to be defective as affecting damages recoverable for breach of warranty. 33 ALR 2d 511.

Purchaser's use or attempted use of livestock known to be defective as affecting damages recoverable for breach of warranty. 33 ALR 2d 534.

Measure in elements of recovery of buyer rescinding sale of domestic animal for seller's breach of warranty. 35 ALR 2d 1273.

tion 17-314 applies wherein plaintiff may collect damages resulting from "putting of the thing sold to the use for which it was sold." *Seaton Ranch Co. v. Montana Vegetable Oil & Feed Co.*, 126 M 415, 252 P 2d 1040, 1045.

References

Cited or applied as section 4313, Civil Code, in *Lander v. Sheehan*, 32 M 25,

33, 79 P 406; *Advance-Rumely Thresher Co. v. Terpening*, 58 M 507, 514, 193 P 752; *Richards v. Aultman & Taylor M. Co.*, 64 M 394, 403, 210 P 82; *Minneapolis-Moline P. I. Co. v. Parent*, 93 M 207, 222, 17 P 2d 1088.

Collateral References

Sales ⇨ 442(2).
77 C.J.S. *Sales* § 376.

17-314. (8680) Breach of warranty of quality for special purpose. The detriment caused by the breach of a warranty of the fitness of an article of personal property for particular purposes is deemed to be that which is defined by the last section, together with a fair compensation for the loss incurred by an effort in good faith to use it for such purpose.

History: En. Sec. 4314, Civ. C. 1895; re-en. Sec. 6062, Rev. C. 1907; re-en. Sec. 8680, R. C. M. 1921. Cal. Civ. C. Sec. 3314. Field Civ. C. Sec. 1854.

Application

This section provides the measure of damages where plaintiff's sheep died after eating feed sold by defendant. The proper measure of damages is not simply reimbursement of the price but rather it is for all damages that were foreseen, or could easily have been foreseen, as likely to result from the putting of the thing sold to the use for which it was sold. *Seaton Ranch Co. v. Montana Vegetable Oil & Feed Co.*, 126 M 415, 252 P 2d 1040, 1045.

Operation and Effect

Where the defense in an action for the price of a stove is framed so as to give

defendant the benefit of this section, it is misleading to instruct the jury on the measure of damages under the preceding section for the breach of warranty of the quality of the article sold. *Lander v. Sheehan*, 32 M 25, 33, 79 P 406.

The detriment caused by the breach of warranty as to the fitness of the truck for particular purposes entitles the plaintiff to recover expenditures made in good faith in attempting to use it. *Butte Floral Co. v. Reed*, 65 M 138, 154, 211 P 325.

References

Cited or applied as section 6062, Revised Codes, in *Advance-Rumely Thresher Co. v. Terpening*, 58 M 507, 514, 193 P 752; *Minneapolis-Moline P. I. Co. v. Parent*, 93 M 207, 222, 17 P 2d 1088.

17-315. (8681) Breach of carrier's obligation to receive goods, etc. The detriment caused by the breach of a carrier's obligation to accept freight, messages, or passengers, is deemed to be the difference between the amount which he had a right to charge for the carriage and the amount which it would be necessary to pay for the same service when it ought to be performed.

History: En. Sec. 4315, Civ. C. 1895; re-en. Sec. 6063, Rev. C. 1907; re-en. Sec. 8681, R. C. M. 1921. Cal. Civ. C. Sec. 3315. Field Civ. C. Sec. 1855.

Collateral References

Carriers ⇨ 45.
13 C.J.S. *Carriers* § 33.
9 Am. Jur. 620, *Carriers*, §§ 313, 314.

17-316. (8682) Breach of carrier's obligation to deliver. The detriment caused by the breach of a carrier's obligation to deliver freight, where he has not converted it to his own use, is deemed to be the value thereof at the place and on the day at which it should have been delivered, deducting the freightage to which he would have been entitled if he had completed the delivery.

History: En. Sec. 4316, Civ. C. 1895; re-en. Sec. 6064, Rev. C. 1907; re-en. Sec. 8682, R. C. M. 1921. Cal. Civ. C. Sec. 3316. Field Civ. C. Sec. 1856.

Collateral References

Carriers ⇨ 94(4).
13 C.J.S. *Carriers* § 184.
9 Am. Jur. 774, *Carriers*, § 583.

17-317. (8683) Carrier's delay. The detriment caused by a carrier's delay in the delivery of freight is deemed to be the depreciation in the intrinsic value of the freight during the delay, and also the depreciation, if

any, in the market value thereof, otherwise than by reason of a depreciation in its intrinsic value, at the place where it ought to have been delivered, and between the day at which it ought to have been delivered and the day of its actual delivery.

History: En. Sec. 4317, Civ. C. 1895; re-en. Sec. 6065, Rev. C. 1907; re-en. Sec. 8683, R. C. M. 1921. Cal. Civ. C. Sec. 3317. Field Civ. C. Sec. 1857.

tice of the urgency of the shipment must be brought home to the carrier. Sankey v. Chicago etc. Ry. Co., 60 M 242, 245, 198 P 544.

Operation and Effect

In order to charge a carrier with special damages arising from delay in the shipment of freight, such as stock feed, no-

Collateral References

Carriers⇒105.
13 C.J.S. Carriers § 221 et seq.
9 Am. Jur. 735, Carriers, §§ 515 et seq.

17-318. (8684) Breach of warranty of authority. The detriment caused by the breach of a warranty of an agent's authority is deemed to be the amount which could have been recovered and collected from his principal if the warranty had been complied with, and the reasonable expenses of legal proceedings taken, in good faith, to enforce the act of the agent against his principal.

History: En. Sec. 4318, Civ. C. 1895; re-en. Sec. 6066, Rev. C. 1907; re-en. Sec. 8684, R. C. M. 1921. Cal. Civ. C. Sec. 3318. Field Civ. C. Sec. 1858.

Collateral References

Principal and Agent⇒197.
3 C.J.S. Agency § 333.

17-319. (8685) Breach of promise of marriage. The damages for the breach of a promise of marriage rest in the sound discretion of the jury.

History: En. Sec. 4319, Civ. C. 1895; re-en. Sec. 6067, Rev. C. 1907; re-en. Sec. 8685, R. C. M. 1921. Cal. Civ. C. Sec. 3319. Field Civ. C. Sec. 1859.

Collateral References

8 Am. Jur. 865, Breach of Promise of Marriage, §§ 25 et seq.

CHAPTER 4

DAMAGES FOR WRONGS

- Section 17-401. Breach of obligation other than contract.
17-402. Wrongful occupation of real property.
17-403. Wilful holding over.
17-404. Conversion of personal property.
17-405. Same—application to benefit of owner.
17-406. Damages of lienor.
17-407. Seduction.
17-408. Injuries to animals.
17-409. Liability of owner of vicious dog.

17-401. (8686) Breach of obligation other than contract. For the breach of an obligation not arising from contract, the measure of damages, except where otherwise expressly provided by this code, is the amount which will compensate for all the detriment proximately caused thereby, whether it could have been anticipated or not.

History: En. Sec. 4330, Civ. C. 1895; re-en. Sec. 6068, Rev. C. 1907; re-en. Sec. 8686, R. C. M. 1921. Cal. Civ. C. Sec. 3333. Field Civ. C. Sec. 1860.

Instructions Based on This Section

In an action by an inexperienced laundry employee, who was injured while feeding a mangle, an instruction that, if she

was injured by defendants' negligence, she was entitled to recover what would compensate for all damage "proximately caused by the negligence of defendants, whether such damage could be anticipated or not," was not objectionable for failing to specify by whom the damage need not be anticipated, where there was no showing in the record that defendants asked

for any more definite declaration upon the subject. In the case of such an employee, the doctrine of assumption of risk has no application. *Coleman v. Perry*, 28 M 1, 8, 72 P 42. See *Coulter v. Union Laundry Co.*, 34 M 590, 603, 606, 87 P 973.

In an action in conversion, the giving of an instruction submitting to the jury the measure of damages declared by this section is error, the rule thus established being inapplicable to such a case. *Ferrat v. Adamson*, 53 M 172, 181, 163 P 112.

Where the facts are few and simple it is not error to give instructions containing abstract statements of statutory law; therefore, in such a case, instructions giving verbatim section 17-208, as to when exemplary damages may be allowed, and this section, on the measure of damages for the breach of an obligation other than contract, may not be held erroneous. *Johnson v. Horn*, 86 M 314, 321, 283 P 427.

Operation in General

In case a city maintains a nuisance, the measure of damages is declared by this section to be the amount which will compensate the injured party for all the detriment proximately caused thereby. *Murray v. City of Butte*, 35 M 161, 169, 88 P 789.

In an action to recover damages for false imprisonment, the court may properly call the attention of the jury to the provisions of this section as to the measure of recovery. *Kroeger v. Passmore*, 36 M 504, 510, 93 P 805.

An action to recover the value of ore, alleged to have been mined from a vein owned by the plaintiff, and to have been converted by the defendant, is the same in legal effect as an action for the conversion of personal property; and, in view of this section and section 17-404, the plaintiff, where he prevails, is entitled, as a matter of law, to interest on the value of the ore converted. *Montana Min. Co. v. St. Louis M. & M. Co.*, 183 Fed 51, 70.

Although defendant was not entitled to retain down payment on land when no binding contract of sale was ever made, he should be allowed to retain so much thereof as would be necessary to compensate him for damage caused by defendant's occupancy of the land. *Fink v. Doggett*, 123 M 324, 214 P 2d 743.

Proximate Cause

To enable the plaintiff, in an action for personal injuries, to recover damages, he must show that the negligence charged was a proximate cause of the injury. *Therriault v. England*, 43 M 376, 382, 116 P 581.

Question of Anticipation by Wrong-Doer

In an action for damages, it is not

necessary to show that the wrong-doer ought to have anticipated the particular injury which resulted; it is sufficient to show that he ought to have anticipated that some injury was likely to result as the reasonable and natural consequence of his negligence. *Mize v. Rocky Mountain Bell Tel. Co.*, 38 M 521, 532, 100 P 971. See *Stewart v. Stone & Webster Eng. Corp.*, 44 M 160, 176, 119 P 568.

What May Be Considered in Estimating Damages

In an action for personal injuries, the jury, in fixing the damages, may consider mental and physical suffering caused by the injury, wages plaintiff might have earned from the date of the injury to the date of the trial, and if the injuries were permanent, any loss by reason of the impairment of his capacity to earn money. *Bourke v. Butte Electric & Power Co.*, 33 M 267, 289, 83 P 470.

Where a party injured through the maintenance of a nuisance by a city has abated it at his own expense, after a refusal by the municipality to remedy the evil, the necessary outlay so incurred is a part of his detriment proximately caused by its maintenance, and recoverable as an element of his damages. *Murray v. City of Butte*, 35 M 161, 169, 88 P 789.

Merely because the earning capacity of plaintiff, a farmer sixty-eight years old, who was injured by falling into an open cellarway, may have been so small as to be a negligible element in making up the estimate of the damages which he could recover, he was none the less entitled to compensation for the destruction of his capacity to pursue his established course of life, an element distinct from loss of earning capacity. *Montague v. Hanson*, 38 M 376, 386, 99 P 1063. See *Mullery v. Great Northern Ry. Co.*, 50 M 408, 426, 148 P 323.

If the engineer of a railway train sees a signal to stop, but fails to stop, for a sick passenger, the probable serious consequences to follow from missing the train may be considered as an element of damages. *Burles v. Oregon Short Line R. R. Co.*, 49 M 129, 133, 140 P 513. See *Jones v. Shannon*, 55 M 225, 234, 175 P 882.

An instruction that if the evidence made it appear that plaintiff's earning capacity had been impaired by reason of his injuries, the jury should compensate him for such impairment, without stating a rule or guide for arriving at the amount to be awarded in that behalf, was faulty. *Zanos v. Great Northern Ry. Co.*, 60 M 17, 22, 198 P 138.

References

Cited or applied as section 4330, Civil Code, in *Thornton-Thomas Co. v. Brether-*

ton, 32 M 80, 98, 80 P 10; as section 6068, Revised Codes, in *Dunlavey v. Doggett*, 38 M 204, 207, 99 P 436; *Rand v. Butte Electric Ry. Co.*, 40 M 398, 412, 107 P 87; *Clifton v. Willson*, 47 M 305, 311, 132 P 424; *Chestnut v. Sales*, 49 M 318, 324, 141 P 986; *Bush v. Chilcott*, 64 M 346, 351, 210 P 907; *Hall v. Advance-Rumely Thresher Co.*, 65 M 566, 575, 212 P 290; *Davenport v. Western Union Tel. Co.*, 91 M 570, 579, 9 P 2d 172; *Speck v. Cottonwood Coal Co.*, 116 F 2d 489, 491; *Sult v. Scandrett*, 119 M 570, 178 P 2d 405, 409.

17-402. (8687) Wrongful occupation of real property. The detriment caused by the wrongful occupation of real property, in cases not embraced in sections 17-403, 17-501 and 17-502 or provided in the Code of Civil Procedure (Title 93) is deemed to be the value of the use of the property for the time of such occupation, not exceeding five years next preceding the commencement of the action or proceeding to enforce the right to damages, and the costs, if any, of recovering the possession.

History: En. Sec. 4331, Civ. C. 1895; re-en. Sec. 6069, Rev. C. 1907; re-en. Sec. 8687, R. C. M. 1921. Cal. Civ. C. Sec. 3334. Based on Field Civ. C. Sec. 1861.

Operation and Effect

In an action for the wrongful occupation and detention of real property, the rental value thereof, during the time of such wrongful occupation, may be proved as an element of damages, under an allegation that the "reasonable value of the rents and profits for the use and occupation of the premises" is a designated sum. *Leyson v. Davenport*, 38 M 62, 68, 98 P 641.

Where a tenant by sufferance planted, raised, and harvested crops, he is answerable under this section for a sum equal at least to the value of the use and occupation of the land during his wrongful possession of it. *Power Mercantile Co. v. Moore Mercantile Co.*, 55 M 401, 412, 177 P 406.

Since this section provides that the detriment caused by the wrongful occupation of land is deemed to be the value of the use of the property for the time of such occupation, an action under it, and not one in conversion to recover a crop grown on land or its value, by a purchaser at foreclosure sale from a tenant alleged to have wrongfully refused to deliver possession on demand, is the proper remedy, the crop or its value including not only the value of the use of the land but also the value of the seed planted and the time and labor of him who plants and cultivates the land. *Kester v. Amon et al.*, 81 M 1, 13, 14, 261 P 288.

In an action in unlawful detainer by the United States against a lessee of Montana Indian lands, continuing in possession after expiration of lease and after the

Collateral References

Damages—95-116 and other particular topics.

25 C.J.S. Damages § 71 et seq.

15 Am. Jur. 469, Damages, §§ 65 et seq.

Effect of board or lodging furnished to injured person in connection with hospital or nursing care on damages recoverable in personal injury action. 18 ALR 2d 659.

Measure of damages for pollution of well, cistern, or spring. 19 ALR 2d 769.

land was leased to a new tenant, judgment was authorized, under section 93-9715, "for three times the amount of the damages" which are under this section "the value of the use of the property for the time of" the occupation by appellant. *Stoltz v. United States*, 99 F 2d 283, 285.

Rental Value

Fact that plaintiff had closed its gasoline filling station entirely because of lack of business prior to its occupancy by defendant would not prove that the property has no rental value. *Pritchard Petroleum Co. v. Farmers Co-op. Oil & Supply Co.*, 121 M 1, 190 P 2d 55, 59.

Value of the Use

The value of the use is the value to the owner of the property, not the value to the wrongdoer. *Pritchard Petroleum Co. v. Farmers Co-op. Oil & Supply Co.*, 121 M 1, 190 P 2d 55, 58.

The value of the use is ordinarily held to be the reasonable rental value of the premises withheld. *Pitchard Petroleum Co. v. Farmers Co-op. Oil & Supply Co.*, 121 M 1, 190 P 2d 55, 58.

In action to recover the value of the use and occupancy of a tract of land which had been used as a filling station it was proper to sustain objection to testimony as to the value of the use of land with respect to each gallon of gasoline and each pound of grease sold, since it is not the withholder's gain but the rental value that measures the compensation. *Pritchard Petroleum Co. v. Farmers Co-op. Oil & Supply Co.*, 121 M 1, 190 P 2d 55, 59.

"Wrongful"

Where plaintiffs leased land to defendant for purpose of mining coal, and lease did not grant defendant a right to mine

by "outstroke" (which is mining by hoisting or removing ore from an adjoining mine through a shaft or opening in demised premises), to which use defendants put the land without consent, and it was not claimed that such use damaged the freehold or reversionary interest, and plaintiffs reserved no right of use in themselves, defendant's occupation was not "wrongful" within this section, so as to authorize plaintiffs to recover from defendant the reasonable value of unauthorized use of plaintiffs' land. *Speck v. Cottonwood Coal Co.*, 116 F 2d 489, 491.

17-403. (8688) Wilful holding over. For wilfully holding over real property, by a person who entered upon the same, as guardian or trustee for an infant, or by right of an estate terminable with any life or lives, after the termination of the trust or particular estate, without the consent of the party immediately entitled after such termination, the measure of damages is the value of the profits received during such holding over.

History: En. Sec. 4332, Civ. C. 1895; re-en. Sec. 6070, Rev. C. 1907; re-en. Sec. 8688, R. C. M. 1921. Cal. Civ. C. Sec. 3335. Field Civ. C. Sec. 1862.

References

Cited or applied as section 6070, Revised Codes, in *Ferrat v. Adamson*, 53 M 172, 181, 163 P 112; *Kester v. Amon et al.*, 81 M 1, 13, 261 P 288.

17-404. (8689) Conversion of personal property. The detriment caused by the wrongful conversion of personal property is presumed to be:

1. The value of the property at the time of its conversion, with the interest from that time; or, where the action has been prosecuted with reasonable diligence, the highest market value of the property at any time between the conversion and the verdict, without interest, at the option of the injured party; and,

2. A fair compensation for the time and money properly expended in pursuit of the property.

History: En. Sec. 4333, Civ. C. 1895; re-en. Sec. 6071, Rev. C. 1907; re-en. Sec. 8689, R. C. M. 1921. Cal. Civ. C. Sec. 3336. Field Civ. C. Sec. 1863.

Duty to Elect

The party injured must elect which of the two measures of damages provided by this section he will claim, and he may not be permitted to rely upon both in the same case. *Thornton-Thomas Co. v. Bretherton*, 32 M 80, 99, 80 P 10.

The measure of damages applicable in an action brought by a partner to recover the value of his interest in the partnership property sold to a stranger by his copartner in violation of subdivision 3 of section 7998 (since repealed) is that fixed by this section as the reasonable value of the property at the date of the conversion, or the highest market value at any time

References

Cited or applied as section 6069, Revised Codes, in *Dunlavey v. Doggett*, 38 M 204, 207, 99 P 436; *Toole v. Weirick*, 39 M 359, 366, 102 P 590; *Ferrat v. Adamson*, 53 M 172, 181, 163 P 112; *Adams v. Durfee et al.*, 67 M 315, 318, 215 P 664.

Collateral References

Trespass ⇨ 47-63 and other particular topics.

87 C.J.S. Trespass §§ 105-139.

Collateral References

Guardian and Ward ⇨ 133; Life Estates ⇨ 28; Trusts ⇨ 374.

31 C.J.S. Estates § 67; 39 C.J.S. Guardian and Ward § 182; 65 C.J.S. Trusts § 996 et seq.

32 Am. Jur. 783, Landlord and Tenant, §§ 926 et seq.

between the conversion and the verdict. *Doll v. Hennessy Mercantile Co.*, 33 M 80, 89, 81 P 625.

In an action for conversion plaintiff may elect to claim damages for the value of the chattel at the time of the alleged conversion, or its highest market value at any time between the conversion and the verdict, without interest (this section), but he may not claim both. *Klind v. Valley County Bank of Hinsdale*, 69 M 386, 389, 222 P 439.

Inequitableness or Unjustness Cannot Deprive Plaintiff of Right to Highest Market Value

Where plaintiff in an action in conversion has brought himself within the rule requiring diligence in prosecuting the action (this section), the fact that the measure of damages recoverable under it may

be inequitable and unjust cannot deprive him of his right to recover the highest market value of the property at any time between the conversion and the verdict, at plaintiff's option, which he might have obtained but for the wrongful act of defendant. *State v. Broadwater Elevator Co. et al.*, 61 M 215, 228, 201 P 687.

In General

In an action in claim and delivery, where all the evidence of value of the property was directed to the date of seizure, and it was not claimed it had any usable value, the damages for detention should have been limited to interest on the amount recovered from the date of seizure to the time the verdict was returned. *Webster v. Sherman*, 33 M 448, 459, 84 P 878.

In an action for conversion, the plaintiff is entitled to recover the value of personal property, at the time of its conversion, with interest from the date of the conversion. *De Celles v. Casey*, 48 M 568, 577, 139 P 586.

In an action in conversion, the measure of damages established by this section is controlling, unless special damages are pleaded and proved, in which event correct practice requires an instruction so supplementing the measure pointed out by said section as to allow such additional damages as may be warranted by the circumstances of the particular case. *Ferrat v. Adamson*, 53 M 172, 181, 163 P 112.

Instruction on Section

An instruction on the measure of damages based on the value of the grain at the time of the conversion, to-wit, when defendant refused to deliver it on demand, was proper under this section. *O'Neill v. Montana Elevator Co.*, 65 M 259, 264, 211 P 222; *First Nat. Bank v. Perrine et al.*, 97 M 262, 270, 33 P 2d 997.

Interest

Where plaintiff in an action for conversion elects to take the value of the property in money, he is entitled to its value as of the date of the conversion fixed in the complaint if established by the evidence, and to legal interest thereon from that date, under this section. *Sensiba v. Occident Elevator Co.*, 80 M 426, 430, 260 P 709.

When plaintiff elects to accept value of property at time of conversion, interest is allowed on that value from the date of conversion even though the value of the property is in dispute and the amount of the property converted has to be determined by the court or jury. *Galbreath v. Armstrong*, 121 M 387, 193 P 2d 630, 633.

Where plaintiff elected to accept value of property at time of conversion, interest

from date of conversion was proper and court erred in ordering satisfaction of judgment for amount which did not include such interest. *Galbreath v. Armstrong*, 121 M 387, 193 P 2d 630, 634.

Where special damages for time and money expended in pursuit of the property were allowed the interest on such amount should be assessed after verdict under section 47-128 and should not run from the time of conversion. *Galbreath v. Armstrong*, 121 M 387, 193 P 2d 630, 634.

Pleading of Damages When Converted Does Not Deprive Plaintiff of Highest Market Value

Under this section, plaintiff in action for conversion does not, by pleading as his damages the value of property when converted, deprive himself of the right to insist upon damages according to the highest market value of the property at any time between the conversion and the verdict, since he is not required to plead the rule of damages, but may in any appropriate way, even by oral declaration in open court, announce his determination to demand the highest market value. *Williams v. Gray*, 62 M 1, 8, 203 P 524.

Value Means Market Value

The measure of damages in an action for conversion is the value of the property at the time of its conversion (this section) and this usually means its market value. *Durocher v. Myers*, 84 M 225, 229, 274 P 1062.

What is the Detriment

Under this section, the detriment caused by the conversion of another's personality is presumed to be its value at the time thereof, with interest from that time. *Guthrie v. Holloran et al.*, 90 M 373, 380, 3 P 2d 406.

When Option as to Damages May Be Exercised

The giving of instructions authorizing the jury to award damages for the wrongful conversion of personal property under both the measures provided by this section, only one of which options could be taken advantage of by the injured party, was harmless error, where there was no evidence warranting the assessment of damages in accordance with one of the standards, and there was no claim that the amount of the verdict was excessive, or that the evidence was insufficient to justify the verdict. *Thornton-Thomas Co. v. Bretherton*, 32 M 80, 99, 80 P 10.

Where an action in conversion has been prosecuted with reasonable diligence, the plaintiff may exercise the option granted him by this section, of demanding the highest market value of the property at

any time between the conversion and the verdict, by giving notice, if he has not otherwise limited himself by his pleading, at any time before the submission of the cause for verdict or decision. *State v. Broadwater Elevator Co. et al.*, 61 M 215, 228, 201 P 687.

Plaintiff in an action in conversion may, by waiving interest, elect any date between that of the conversion and the date of the trial on which to lay his damages. *Klus v. Lamire*, 71 M 445, 447, 230 P 364.

References

Cited or applied as section 4333, Civil Code, in *Smith v. Caldwell*, 22 M 331, 339, 56 P 590; *Harrington v. Stromberg-Mullins Co.*, 29 M 157, 160, 74 P 413; as section 6071, Revised Codes, in *Dunlavey v. Doggett*, 38 M 204, 208, 99 P 436;

Chestnut v. Sales, 49 M 318, 324, 141 P 986; *Montana Min. Co. v. St. Louis M. & M. Co.*, 183 Fed 51, 70; *Swanberg v. Schaefer et al.*, 88 M 16, 21, 289 P 561; *Continental Supply Co. v. White et al.*, 92 M 254, 271, 12 P 2d 569; *Sorensen v. Jacobson*, 125 M 148, 232 P 2d 332, 338, 26 ALR 2d 1186.

Collateral References

Trover and Conversion 44-52.
89 C.J.S. *Trover and Conversion* § 163 et seq.
53 Am. Jur. 885, *Trover and Conversion*, §§ 94 et seq.

Measure of damages for conversion or loss of, or damage to personal property having no market value. 12 ALR 2d 933.

Damages recoverable for wrongful registration of trademark. 26 ALR 2d 1184.

17-405. (8690) Same—application to benefit of owner. The presumption declared by the last section cannot be repelled, in favor of one whose possession was wrongful from the beginning, by his subsequent application of the property to the benefit of the owner, without his consent.

History: En. Sec. 4334, Civ. C. 1895; re-en. Sec. 6072, Rev. C. 1907; re-en. Sec. 8690, R. C. M. 1921. Cal. Civ. C. Sec. 3337. Field Civ. C. Sec. 1864.

References

Cited or applied as section 4334, Civil Code, in *Lutey v. Clark*, 31 M 45, 54, 77 P 305, 84 P 73; *Thornton-Thomas Co. v. Bretherton*, 32 M 80, 98, 80 P 10.

17-406. (8691) Damages of lienor. One having a mere lien on personal property cannot recover greater damages for its conversion, from one having a right thereto superior to his, after his lien is discharged, than the amount secured by the lien, and the compensation allowed by section 17-404 for the loss of time and expenses.

History: En. Sec. 4335, Civ. C. 1895; re-en. Sec. 6073, Rev. C. 1907; re-en. Sec. 8691, R. C. M. 1921. Cal. Civ. C. Sec. 3338. Field Civ. C. Sec. 1865.

References

Cited or applied as section 6073, Revised

Codes, in *Ferrat v. Adamson*, 53 M 172, 181, 163 P 112.

Collateral References

Trover and Conversion 42, and other particular topics.
89 C.J.S. *Trover and Conversion* § 164.

17-407. (8692) Seduction. The damages for seduction rest in the sound discretion of the jury.

History: En. Sec. 4336, Civ. C. 1895; re-en. Sec. 6074, Rev. C. 1907; re-en. Sec. 8692, R. C. M. 1921. Cal. Civ. C. Sec. 3339. Field Civ. C. Sec. 1866.

Cross-References

Right to sue for, secs. 93-2807, 93-2808.
Time for commencement of action, two years, sec. 93-2606.

References

Cited or applied as section 6074, Revised Codes, in *Ferrat v. Adamson*, 53 M 172, 181, 163 P 112.

Collateral References

Seduction 19-22.
79 C.J.S. *Seduction* § 24.
47 Am. Jur. 676, *Seduction*, §§ 93 et seq.

17-408. (8693) Injuries to animals. For wrongful injuries to animals, being subjects of property, committed wilfully or by gross negligence, in disregard of humanity, exemplary damages may be given.

History: En. Sec. 4337, Civ. C. 1895; re-en. Sec. 6075, Rev. C. 1907; re-en. Sec. 8693, R. C. M. 1921. Cal. Civ. C. Sec. 3340. Field Civ. C. Sec. 1867.

Collateral References

Animals⇒44, 85; Damages⇒91(1).
3 C.J.S. Animals § 234; 25 C.J.S. Damages § 123.
2 Am. Jur. 760, Animals, §§ 91 et seq.

17-409. Liability of owner of vicious dog. The owner of any dog which shall without provocation bite any person while such person is on or in a public place, or lawfully on or in a private place, including the property of the owner of such dog, and located within an incorporated city or town, shall be liable for such damages as may be suffered by the person bitten, regardless of the former viciousness of such dog or the owner's knowledge of such viciousness.

A person is lawfully upon the private property of such owner within the meaning of this act when he is on such property in the performance of any duty imposed upon him by the laws of this state or by the laws or postal regulations of the United States of America, or when he is on such property as an invitee or licensee of the person lawfully in possession of the property.

History: En. Sec. 1, Ch. 113, L. 1943.

CHAPTER 5

PENAL DAMAGES

- Section 17-501. Failure to quit, after notice.
17-502. Tenant wilfully holding over.
17-503. Injuries to trees, etc.
17-504. Injuries inflicted in a duel.
17-505. Same.

17-501. (8694) Failure to quit, after notice. If any tenant gives notice of his intention to quit the premises, and does not deliver up the possession at the time specified in the notice, he must pay to the landlord treble rent during the time he continues in possession after such notice.

History: En. Sec. 4350, Civ. C. 1895; re-en. Sec. 6076, Rev. C. 1907; re-en. Sec. 8694, R. C. M. 1921. Cal. Civ. C. Sec. 3344.

Collateral References

Landlord and Tenant⇒129(4).
51 C.J.S. Landlord and Tenant § 315.

References

Kester v. Amon et al., 81 M 1, 13, 261 P 288.

17-502. (8695) Tenant wilfully holding over. If any tenant, or any person in collusion with the tenant, holds over any lands or tenements after demand made and one month's notice, in writing given, requiring the possession thereof, such person holding over must pay to the landlord treble rent during the time he continues in possession after such notice.

History: En. Sec. 4351, Civ. C. 1895; re-en. Sec. 6077, Rev. C. 1907; re-en. Sec. 8695, R. C. M. 1921. Cal. Civ. C. Sec. 3345.

Purchaser at Void Foreclosure Sale Held Not Liable in Treble Damages in Absence of Notice

Where a mortgagee bank purchased the property at foreclosure sale, void because

mortgage subsequently declared void, during the time it had possession received some income therefrom, such income may be deducted from its claim against the estate for moneys it loaned it to pay costs of administration, for which debt the mortgage had been given to secure the loan, but could not be held for treble damages under this section for "holding

over" in the absence of proof of the required notice (not finding it necessary to consider the feasibility of whether appellant's landlord-tenant theory applies to purchasers under void foreclosure sales). In *re* Anderson's Estate, 113 M 125, 129, 122 P 2d 832.

References

Kester v. Amon et al., 81 M 1, 13, 261 P 288; Anderson v. Commercial Credit Co., 110 M 333, 338, 101 P 2d 367.

17-503. (8696) Injuries to trees, etc. For wrongful injuries to timber, trees, or underwood upon the land of another, or removal thereof, the measure of damage is three times such a sum as would compensate for the actual detriment, except where the trespass was casual and involuntary, or committed under the belief that the land belonged to the trespasser, or where the wood was taken by the authority of highway officers for the purposes of a highway; in which cases the damages are a sum equal to the actual detriment.

History: En. Sec. 4352, Civ. C. 1895; re-en. Sec. 6078, Rev. C. 1907; re-en. Sec. 8696, R. C. M. 1921. Cal. Civ. C. Sec. 3346. Field Civ. C. Sec. 1871.

Operation and Effect

In an action for trespass brought under this section to recover for timber wrongfully cut from a mining claim, where the evidence was sufficient to sustain a finding for \$900 actual damages sustained, a general verdict for plaintiff for \$2,700, reasonably construed in view of the in-

struction of the court that under this section the jury could treble the damages if the trespass was wilful, held in effect a finding that the actual detriment sustained was \$900 and that the jury trebled the damages in the belief that the trespass was wilful. *Tripp v. Silver Dyke Min. Co.*, 70 M 120, 128, 224 P 272.

Collateral References

Trespass ⇨ 61.

86 C.J.S. Trespass § 135 et seq.

17-504. (8697) Injuries inflicted in a duel. If any person slays or permanently disables another person in a duel in this state, the slayer must provide for the maintenance of the widow or wife of the person slain or permanently disabled, and for the minor children, in such manner and at such cost, either by aggregate compensation in damages to each, or by a monthly, quarterly, or annual allowance, to be determined by the court.

History: En. Sec. 4353, Civ. C. 1895; re-en. Sec. 6079, Rev. C. 1907; re-en. Sec. 8697, R. C. M. 1921. Cal. Civ. C. Sec. 3347.

Collateral References

Assault and Battery ⇨ 40; Death ⇨ 14(1), 78.

6 C.J.S. Assault and Battery § 56; 25 C.J.S. Death §§ 23, 95.

17-505. (8698) Same. If any person slays or disables another person in a duel in this state, the slayer is liable for and must pay all debts of the person slain or permanently disabled.

History: En. Sec. 4354, Civ. C. 1895; re-en. Sec. 6080, Rev. C. 1907; re-en. Sec. 8698, R. C. M. 1921. Cal. Civ. C. Sec. 3348.

CHAPTER 6

VALUE—HOW ESTIMATED—LIMITATIONS OF DAMAGES

- Section 17-601. Value—how estimated in favor of seller.
 17-602. Value—how estimated in favor of buyer.
 17-603. Property of peculiar value.
 17-604. Value of thing in action.
 17-605. Damages allowed in this chapter, exclusive of others.
 17-606. Limitation of damages.

- 17-607. Damages to be reasonable.
 17-608. Nominal damages.
 17-609. Nominal damages only in certain suits against county commissioners.

17-601. (8699) Value—how estimated in favor of seller. In estimating damages, the value of property to the seller thereof is deemed to be the price which he could have obtained therefor in the market nearest to the place at which it should have been accepted by the buyer, and at such time after the breach of the contract as would have sufficed, with reasonable diligence, for the seller to effect a resale.

History: En. Sec. 4360, Civ. C. 1895; re-en. Sec. 6081, Rev. C. 1907; re-en. Sec. 8699, R. C. M. 1921. Cal. Civ. C. Sec. 3353. Field Civ. C. Sec. 1872.

Operation and Effect

Where, after the breach of an agreement to purchase certain shares of stock from plaintiff brokers, under the terms of which defendants were bound to receive and pay for the same within a stipulated number of days, at which time title should pass, plaintiffs sold the stock in open market at the best available price, the measure of damages was the difference between the price fixed in the contract and the

value of the shares to the seller. *Welch v. Nichols*, 41 M 435, 441, 110 P 89. See *Raiche v. Morrison*, 47 M 127, 132, 130 P 1074.

The admission of proof showing a price received for cattle at a market other than at the market nearest the place of delivery under the contract is error. *Church v. Zywert*, 58 M 102, 107, 190 P 291.

Collateral References

Sales—384(1); Vendor and Purchaser —330.

78 C.J.S. Sales § 477 et seq.; 66 C.J. Vendor and Purchaser § 1537 et seq.

17-602. (8700) Value—how estimated in favor of buyer. In estimating damages, except as provided by the next two sections, the value of property to a buyer or owner thereof, deprived of its possession, is deemed to be the price at which he might have bought an equivalent thing in the market nearest to the place where the property ought to have been put into his possession, and at such time after the breach of duty upon which his right to damages is founded as would suffice, with reasonable diligence, for him to make such a purchase.

History: En. Sec. 4361, Civ. C. 1895; re-en. Sec. 6082, Rev. C. 1907; re-en. Sec. 8700, R. C. M. 1921. Cal. Civ. C. Sec. 3354. Field Civ. C. Sec. 1873.

Operation and Effect

Under section 17-308, and this section, evidence that the market price of the hay purchased by plaintiff, at time and place of delivery, was in excess of the contract price was sufficient to entitle it to substantial damages for defendant's failure to deliver it, even though plaintiff's evidence did not show that it suffered actual damages by having to go into the open market and purchase hay to fill its own contracts or supply its own need. *Sturm & Drake v. Roberts Elevator Co.*, 60 M 239, 198 P 545.

The measure of damages for breach of warranty of title to a brick building sold as personal property and situated on land owned by a third person is that set forth in section 17-312, and this section, including the element of cost of removal, if removal was necessary, etc. *Lewis v. Lambros*, 65 M 366, 369, 211 P 212.

References

Whitelaw v. Vallance et al., 60 M 172, 176, 198 P 449.

Collateral References

Sales—418(3); Vendor and Purchaser —351(2-5).

78 C.J.S. Sales § 543 et seq.; 66 C.J. Vendor and Purchaser § 1708 et seq.

17-603. (8701) Property of peculiar value. Where a certain property has a peculiar value to a person recovering damages for deprivation thereof, or injury thereto, that may be deemed to be its value against one who had notice thereof before incurring a liability to damages in respect thereof, or against a wilful wrong-doer.

History: En. Sec. 4362, Civ. C. 1895; re-en. Sec. 6083, Rev. C. 1907; re-en. Sec. 8701, R. C. M. 1921. Cal. Civ. C. Sec. 3355. Field Civ. C. Sec. 1874.

Collateral References

Damages⇒103 et seq. and other particular topics.
25 C.J.S. Damages § 88.

17-604. (8702) Value of thing in action. For the purpose of estimating damages, the value of an instrument in writing is presumed to be equal to that of the property to which it entitles the owner.

History: En. Sec. 4363, Civ. C. 1895; re-en. Sec. 6084, Rev. C. 1907; re-en. Sec. 8702, R. C. M. 1921. Cal. Civ. C. Sec. 3356. Based on Field Civ. C. Sec. 1875.

Collateral References

Damages⇒163(4) and other particular topics.
25 C.J.S. Damages § 144.

17-605. (8703) Damages allowed in this chapter, exclusive of others. The damages prescribed by this chapter are exclusive of exemplary damages and interest, except where those are expressly mentioned.

History: En. Sec. 4364, Civ. C. 1895; re-en. Sec. 6085, Rev. C. 1907; re-en. Sec. 8703, R. C. M. 1921. Cal. Civ. C. Sec. 3357. Field Civ. C. Sec. 1876.

Collateral References

Damages⇒87(1).
25 C.J.S. Damages § 117.

17-606. (8704) Limitation of damages. Notwithstanding the provisions of this chapter, no person can recover a greater amount in damages for the breach of an obligation than he could have gained by the full performance thereof on both sides, except in the cases specified in the chapters on exemplary damages, penal damages, and in sections 17-319, 17-407 and 17-408.

History: En. Sec. 4365, Civ. C. 1895; re-en. Sec. 6086, Rev. C. 1907; re-en. Sec. 8704, R. C. M. 1921. Cal. Civ. C. Sec. 3358. Field Civ. C. Sec. 1877.

Co. et al., 61 M 215, 230, 201 P 687; *Borgeas v. Oregon etc. R. R. Co. et al.*, 73 M 407, 423, 236 P 1069; *Sample v. Murray Hospital*, 103 M 195, 200, 62 P 2d 241.

References

Cited or applied as section 6086, Revised Codes, in *Clifton v. Willson*, 47 M 305, 310, 132 P 424; *State v. Broadwater Elevator*

Collateral References

Damages⇒117 et seq. and other particular topics.
25 C.J.S. Damages § 73.

17-607. (8705) Damages to be reasonable. Damages must, in all cases, be reasonable, and where an obligation of any kind appears to create a right to unconscionable and grossly oppressive damages, contrary to substantial justice, no more than reasonable damages can be recovered.

History: En. Sec. 4366, Civ. C. 1895; re-en. Sec. 6087, Rev. C. 1907; re-en. Sec. 8705, R. C. M. 1921. Cal. Civ. C. Sec. 3359. Field Civ. C. Sec. 1878.

Changes in cost of living or in purchasing power of money as affecting damages for personal injuries or death. 12 ALR 2d 61.

Loss of profits in a business in which plaintiff is interested as a factor in determining damages for impairment of earning capacity in action for personal injuries. 12 ALR 2d 288.

Adequacy of damages in action by person injured for personal injuries not resulting in death (for years 1941 to 1950). 16 ALR 2d 393.

Adequacy of damages for personal injuries resulting in death of adult (for years 1941 to 1950). 17 ALR 2d 832.

References

State v. Broadwater Elevator Co. et al., 61 M 215, 231, 201 P 687.

Collateral References

Damages⇒1 et seq.
25 C.J.S. Damages § 1.

Propriety of taking income tax liability in due consideration and fixing damages for impairment of earning capacity. 9 ALR 2d 320.

17-608. (8706) Nominal damages. When a breach of duty has caused no appreciable detriment to the party affected, he may yet recover nominal damages.

History: En. Sec. 4367, Civ. C. 1895; re-en. Sec. 6088, Rev. C. 1907; re-en. Sec. 8706, R. C. M. 1921. Cal. Civ. C. Sec. 3360. Field Civ. C. Sec. 1879.

References

Cited or applied in *Fauver v. Wilkoske*, 123 M 228, 211 P 2d 420, 423, 17 ALR 2d 518.

Collateral References

Damages 8.
25 C.J.S. Damages § 8.
15 Am. Jur. 390, Damages, §§ 5-8.

Nominal damages in action for tenant's failure to surrender possession of rented premises. 32 ALR 2d 611.

17-609. (8706.1) Nominal damages only in certain suits against county commissioners. In civil actions against boards of county commissioners or members thereof to recover damages for personal injuries arising out of or from breach of duty relative to the condition of roads, highways or bridges, only nominal damages shall be recovered unless it be established by the evidence that the action or non-action complained of was a wilful or a gross neglect of duty.

History: En. Sec. 1, Ch. 153, L. 1939.

11 C.J.S. Bridges § 98; 40 C.J.S. Highways § 282; 60 C.J.S. Motor Vehicles § 233.

Collateral References

Automobiles 313; Bridges 46(7); Highways 212.

CHAPTER 7

SPECIFIC RELIEF—PURCHASES OF PROPERTY

- Section 17-701. Specific relief, etc.—when allowed.
17-702. Specific relief—how given.
17-703. Preventive relief—how given.
17-704. Not to enforce penalty, etc.
17-705. Judgment for possession or title to real property.
17-706. Judgment for delivery of personal property.
17-707. When holder may be compelled to deliver.

17-701. (8707) Specific relief, etc.—when allowed. Specific or preventive relief may be given in the cases specified in sections 17-702 to 17-1101 and in no others.

History: En. Sec. 4380, Civ. C. 1895; re-en. Sec. 6089, Rev. C. 1907; re-en. Sec. 8707, R. C. M. 1921. Cal. Civ. C. Sec. 3366. Field Civ. C. Sec. 1880.

Collateral References

Judgment 4 and other particular topics.
49 C.J.S. Judgment § 6.

17-702. (8708) Specific relief—how given. Specific relief is given:

1. By taking possession of a thing, and delivering it to a claimant;
 2. By compelling the party himself to do that which ought to be done;
- or,
3. By declaring and determining the rights of parties, otherwise than by an award of damages.

History: En. Sec. 4381, Civ. C. 1895; re-en. Sec. 6090, Rev. C. 1907; re-en. Sec. 8708, R. C. M. 1921. Cal. Civ. C. Sec. 3367. Field Civ. C. Sec. 1881.

Collateral References

Declaratory Judgment 1; Injunction

5; Judgment 4; Replevin 1; Specific Performance 1.

1 C.J.S. Actions §§ 17, 18; 43 C.J.S. Injunctions § 5; 77 C.J.S. Replevin § 2; 81 C.J.S. Specific Performance § 1.

17-703. (8709) Preventive relief—how given. Preventive relief is given by prohibiting a party from doing that which ought not to be done.

History: En. Sec. 4382, Civ. C. 1895; re-en. Sec. 6091, Rev. C. 1907; re-en. Sec. 8709, R. C. M. 1921. Cal. Civ. C. Sec. 3368. Field Civ. C. Sec. 1882.

Collateral References

Injunction \S 1; Judgment \S 4 and other particular topics.

43 C.J.S. Injunctions $\S\S$ 1, 12; 49 C.J.S. Judgment \S 6.

17-704. (8710) Not to enforce penalty, etc. Neither specific nor preventive relief can be granted to enforce a penal law, except in a case of nuisance, nor to enforce the penalty or forfeiture in any case.

History: En. Sec. 4383, Civ. C. 1895; re-en. Sec. 6092, Rev. C. 1907; re-en. Sec. 8710, R. C. M. 1921. Cal. Civ. C. Sec. 3369. Field Civ. C. Sec. 1883.

Operation and Effect

Injunction is an equitable remedy, and as a general rule a court of equity will take no part in the administration of the criminal law and may not enjoin either the commission of crimes or their prosecution and punishment. *State ex rel. Stewart v. District Court*, 77 M 361, 370, 251 P 137.

Unlicensed Photographers

The taking of photographs, either by licensed or unlicensed photographers, not being a nuisance, an injunction could not be had to prevent the activities of unlicensed photographers. *Montana State Board of Examiners v. Keller*, 120 M 364, 185 P 2d 503, 506.

When Injunctive Relief May Be Granted

Though a court of equity has no criminal jurisdiction, where a penalty is provided by a statute for a violation of its provisions, such as the eight-hour law relating to workmen in underground mines, where there is some interference, actual or threatened, with property or other personal rights, equity may grant injunctive relief notwithstanding the employer may thereafter be punished criminally for the infringement of such rights. Contention that plaintiff employees are estopped from seeking relief because in *pari delicto* with defendant company, held not meritorious. *Butte Miners' Union No. 1 v. Anaconda Copper Mining Co.*, 112 M 418, 435, 118 P 2d 148.

17-705. (8711) Judgment for possession or title to real property. A person entitled to specific real property, by reason either of a perfected title, or of a claim to title which ought to be perfected, may recover the same in the manner prescribed by Title 93, either by a judgment for its possession, to be executed by the sheriff, or by a judgment requiring the other party to perfect the title, and to deliver possession of the property.

History: En. Sec. 4390, Civ. C. 1895; re-en. Sec. 6093, Rev. C. 1907; re-en. Sec. 8711, R. C. M. 1921. Cal. Civ. C. Sec. 3375. Field Civ. C. Sec. 1884.

Collateral References

Ejectment \S 114; Judgment \S 4 and other particular topics.

28 C.J.S. Ejectment \S 115; 49 C.J.S. Judgments \S 6.

References

Doggett v. Johnson, 82 M 338, 348, 267 P 292.

17-706. (8712) Judgment for delivery of personal property. A person entitled to the immediate possession of specific personal property may recover the same in the manner provided by Title 93.

History: En. Sec. 4400, Civ. C. 1895; re-en. Sec. 6094, Rev. C. 1907; re-en. Sec. 8712, R. C. M. 1921. Cal. Civ. C. Sec. 3379. Field Civ. C. Sec. 1885.

References

Kramlich v. Tullock, 84 M 601, 606, 277 P 411.

17-707. (8713) When holder may be compelled to deliver. Any person having the possession or control of a particular article of personal property, of which he is not the owner, may be compelled specifically to deliver it to the person entitled to its immediate possession.

History: En. Sec. 4401, Civ. C. 1895; re-en. Sec. 6095, Rev. C. 1907; re-en. Sec. 8713, R. C. M. 1921. Cal. Civ. C. Sec. 3380. Based on Field Civ. C. Sec. 1886.

References

Stiemke v. Jankovich et al., 68 M 60,
63, 217 P 650; Kramlich v. Tullock, 84 M
601, 606, 277 P 411.

Collateral References

Replevin \Rightarrow 2.
77 C.J.S. Replevin § 2.

CHAPTER 8

SPECIFIC RELIEF—PERFORMANCE OF OBLIGATIONS

Section 17-801.	In what cases compelled.
17-802.	Remedy mutual.
17-803.	No remedy unless mutual.
17-804.	Distinction between real and personal property.
17-805.	Contract signed by one party only, may be enforced by others.
17-806.	Liquidation of damages not a bar to specific performance.
17-807.	What cannot be specifically enforced.
17-808.	What parties cannot be compelled to perform.
17-809.	What parties cannot have specific performance in their favor.
17-810.	Specific performance not required when oppressive.
17-811.	Agreement to sell property by one who has no title.
17-812.	Relief against parties claiming under the person bound to perform.

17-801. (8714) In what cases compelled. Except as otherwise provided in sections 17-702 to 17-1101, the specific performance of an obligation may be compelled:

1. When the act to be done is in the performance, wholly or partly, of an express trust;
2. When the act to be done is such that pecuniary compensation for its non-performance would not afford adequate relief;
3. When it would be extremely difficult to ascertain the actual damage caused by the non-performance of the act to be done; or,
4. When it has been expressly agreed, in writing, between the parties to the contract, that specific performance thereof may be required by either party, or that damages shall not be considered adequate relief.

History: En. Sec. 4410, Civ. C. 1895;
re-en. Sec. 6096, Rev. C. 1907; re-en. Sec.
8714, R. C. M. 1921. Cal. Civ. C. Sec. 3384.
Field Civ. C. Sec. 1887.

to be enforceable, must be in writing,
was not raised either in the pleadings or
by objection to the introduction of evi-
dence. Alley v. Peeso, 88 M 1, 7, 290 P
238.

Operation and Effect

Where complaint alleged breach of a contract to convey land described therein, it was sufficient to raise the presumption that pecuniary compensation would not afford adequate relief, within subdivision 2 of this section, though there was no allegation of special circumstances showing that plaintiff had no adequate remedy at law. Christiansen v. Aldrich, 30 M 446, 450, 76 P 1007.

The objection that a contract in suit is invalid under the statute of frauds is waived where the point that the contract,

References

Brubaker v. D'Orazi, 120 M 22, 179 P
2d 538, 544.

Collateral References

Specific Performance \Rightarrow 1 et seq., 25 et
seq.
81 C.J.S. Specific Performance §§ 1 et
seq., 30.

Specific performance: Compensation or
damages awarded purchaser for delay in
conveyance of land. 7 ALR 2d 1204.

17-802. (8715) Remedy mutual. When either of the parties to an obligation is entitled to a specific performance thereof, according to the provisions of the last section, the other party is also entitled to it, thought not within those provisions.

History: En. Sec. 4411, Civ. C. 1895; 8715, R. C. M. 1921. Cal. Civ. C. Sec. 3385.
re-en. Sec. 6097, Rev. C. 1907; re-en. Sec. Field Civ. C. Sec. 1888.

Operation and Effect

Under this section, when either of the parties to an obligation is entitled to specific performance, the other party is also entitled to it, the remedy being mutual. *Saint et al. v. Beal*, 66 M 292, 295, 213 P 248.

Id. Held, under this section, that the vendor of land under a contract giving him the privilege to declare all of the deferred payments immediately due upon failure to make any one of them, may maintain an action against the vendee to compel specific performance of the con-

17-803. (8716) No remedy unless mutual. Neither party to any obligation can be compelled specifically to perform it, unless the other party thereto has performed, or is compellable specifically to perform, everything to which the former is entitled under the same obligation, either completely, or nearly so, together with full compensation for any want of entire performance.

History: En. Sec. 4412, Civ. C. 1895; re-en. Sec. 6098, Rev. C. 1907; re-en. Sec. 8716, R. C. M. 1921. Cal. Civ. C. Sec. 3386. Field Civ. C. Sec. 1889.

Operation and Effect

Where a party seeking specific performance of an agreement for an exchange of land tendered a deed and offered to do equity, the remedy became mutual, the fact that when the agreement was made the element of mutuality may have been absent then becoming immaterial. *Hogan v. Thrasher*, 72 M 318, 329, 233 P 607.

As a general rule of equity, a contract will not be specifically enforced unless there is mutuality of obligation and remedy, i. e., where one of the parties is not bound by the contract, he cannot call upon the court to compel specific performance by the other party, which rule is substantially embodied in this section. *Templeton v. Williard et al.*, 83 M 317, 321, 272 P 522.

Where plaintiff conveyed real property to his partner to be used in the partnership business under the condition that the partner assume certain mortgage payments, and if he failed to do so, plaintiff would be entitled to again become the sole owner of the property and the partner entitled to repayment of the money he invested in the business, a decree awarding specific performance by reconveyance of the realty, conditioned that plaintiff mortgage all the partnership property to secure defendant's refund under his counterclaim, the court finding that a money judgment against plaintiff would probably be uncollectible, held sustained by the evidence. *Hall v. Lommasson*, 113 M 272, 278, 124 P 2d 694.

Want of mutuality did not preclude specific enforcement of written option to

tract on his part by paying the balance of the purchase price.

References

Kofoed v. Bray, 69 M 78, 83, 220 P 532; *Conner v. Helvik*, 105 M 437, 455, 73 P 2d 541.

Collateral References

Specific Performance—6.
81 C.J.S. Specific Performance § 10.
49 Am. Jur. 46, Specific Performance, §§ 34 et seq.

repurchase liquor business, where defendant's obligation under decree was conditioned upon payment by plaintiff of amounts found by the court to be due defendant. *Brubaker v. D'Orazi*, 120 M 22, 179 P 2d 538, 544.

Where plaintiff after agreeing with defendant that he would put up money to purchase a gas and oil lease, but did not put it up, he could not compel the defendant to transfer a half interest in the lease since to be entitled to specific performance he must show that he has performed his part of the agreement. *McDonald v. Stewart*, 127 M 188, 259 P 2d 799.

Unless performance is waived or excused, a plaintiff seeking to enforce a contract must perform his obligations thereunder, and plaintiff's wilful violation of an essential covenant of a contract is a defense to specific enforcement of the contract. *McDonald v. Stewart*, 127 M 188, 259 P 2d 799, 805.

Where plaintiff has done everything under the contract except to issue and deliver the certificates of stock to defendant and this can be specifically enforced, this section does not prevent plaintiff from specific performance to compel defendant to assign an oil and gas lease which was entered into. *Bull Creek Oil & Gas Development v. Bethel*, 127 M 222, 258 P 2d 960, 963.

References

Cited or applied as section 4412, Civil Code, in *Finlen v. Heinze*, 32 M 354, 386, 80 P 918; *Kofoed v. Bray*, 69 M 78, 83, 220 P 532; *Conner v. Helvik*, 105 M 437, 455, 73 P 2d 541.

Collateral References

Specific Performance—32.
81 C.J.S. Specific Performance § 10.

17-804. (8717) Distinction between real and personal property. It is to be presumed that the breach of an agreement to transfer real property cannot be adequately relieved by pecuniary compensation, and that the breach of an agreement to transfer personal property can be thus relieved.

History: En. Sec. 4413, Civ. C. 1895; re-en. Sec. 6099, Rev. C. 1907; re-en. Sec. 8717, R. C. M. 1921. Cal. Civ. C. Sec. 3387. Field Civ. C. Sec. 1890.

Operation and Effect

In an action for the specific performance of a contract for the sale of lands, it is not necessary for the complaint to allege that the plaintiff has no complete or adequate remedy at law in damages. *Ide v. Leiser*, 10 M 5, 15, 24 P 695; *Christiansen v. Aldrich*, 30 M 446, 451, 76 P 1007; *Lowery v. Cole*, 47 M 64, 68, 130 P 410.

Id. It is not necessary, in an action for the specific performance of a contract for the sale of real property, for the plaintiff, asking for a preliminary injunction, to allege that he has no adequate remedy at law; when it appears that the defendant has refused to comply with his contract, the presumption attaches that the plaintiff has suffered detriment, which is irreparable in an action for damages; he is, therefore, *prima facie* entitled to invoke the aid of equity to obtain equitable relief, namely, the performance of the contract.

Under this section, it is presumed that the breach of an agreement to sell or

exchange land cannot be adequately compensated in damages, and where the court on ample evidence found that plaintiff in his action for specific performance could not be made whole by damages, the contention that specific performance should not have been decreed has no merit. *Hogan v. Thrasher*, 72 M 318, 329, 233 P 607.

Where defendant vendee in a suit seeking specific performance introduced no evidence in opposition to the presumption declared by this section, he was in no position to contend on appeal that the vendor had an adequate remedy at law by a suit for damages. *Conner v. Helvik*, 105 M 437, 455, 73 P 2d 541.

The presumption that breach of agreement to transfer personal property can be adequately relieved by pecuniary compensation is rebuttable and was overcome by trial court's express finding to the contrary in action for specific performance of written option to repurchase retail liquor business. *Brubaker v. D'Orazi*, 120 M 22, 179 P 2d 538, 544.

Collateral References

Specific Performance—63-72, 119.

81 C.J.S. Specific Performance §§ 62, 140.

17-805. (8718) Contract signed by one party only, may be enforced by others. A party who has signed a written contract may be compelled specifically to perform it, though the other party has not signed it, if the latter has performed, or offers to perform it on his part, and the case is otherwise proper for enforcing specific performance.

History: En. Sec. 4414, Civ. C. 1895; re-en. Sec. 6100, Rev. C. 1907; re-en. Sec. 8718, R. C. M. 1921. Cal. Civ. C. Sec. 3388. Field Civ. C. Sec. 1891.

References

Cited or applied in *Johnson v. Elliot*, 123 M 597, 218 P 2d 703, 707.

Collateral References

Specific Performance—17, 32(1).

81 C.J.S. Specific Performance §§ 13, 23.

17-806. (8719) Liquidation of damages not a bar to specific performance. A contract otherwise proper to be specifically enforced may be thus enforced, though a penalty is imposed, or the damages are liquidated for its breach, and the party in default is willing to pay the same.

History: En. Sec. 4415, Civ. C. 1895; re-en. Sec. 6101, Rev. C. 1907; re-en. Sec. 8719, R. C. M. 1921. Cal. Civ. C. Sec. 3389. Field Civ. C. Sec. 1892.

Collateral References

Specific Performance—58.

81 C.J.S. Specific Performance § 51.

49 Am. Jur. 57, Specific Performance, §§ 43-45.

17-807. (8720) What cannot be specifically enforced. The following obligations cannot be specifically enforced:

1. An obligation to render personal service, or to employ another therein;
2. An agreement to marry or live with another;
3. An agreement to submit a controversy to arbitration;
4. An agreement to perform an act which the party has not power to perform lawfully when required to do so;
5. An agreement to procure the act or consent of the wife of the contracting party, or of any other third person; or
6. An agreement, the terms of which are not sufficiently certain to make the precise act which is to be done clearly ascertainable.

History: En. Sec. 4416, Civ. C. 1895; re-en. Sec. 6102, Rev. C. 1907; re-en. Sec. 8720, R. C. M. 1921. Cal. Civ. C. Sec. 3390. Field Civ. C. Sec. 1893.

Operation and Effect

An agreement to enter into an agreement upon terms to be afterward settled between the parties cannot, as a general rule, be enforced. *Long v. Needham*, 37 M 408, 423, 96 P 731; *Monahan v. Allen*, 47 M 75, 80, 130 P 768; *Livingston Water-Works v. City of Livingston*, 53 M 1, 10, 162 P 381.

A writing acknowledging receipt of a sum of money in part payment "for ranch of 200 acres (describing it by section, township and range), water rights of located 1869 and 1871. If not as I say and represent the money to be returned," intended by the parties as the basis for future negotiations and superseded by a

formal deed executed a few days later, held incapable of specific performance because too indefinite and lacking in mutuality. *Kofoed v. Bray*, 69 M 78, 83, 220 P 532.

Before a decree of specific performance may be awarded, the contract sought to be specifically performed must, under subdivision 6 of this section, not only be certain but also complete. *Reeves v. Littlefield et al.*, 101 M 482, 486, 54 P 2d 879.

References

Cited or applied as section 6102, Revised Codes, in *In re Grogan's Estate*, 38 M 540, 542, 100 P 1044; *Sanger v. Huguenel et al.*, 65 M 236, 243, 211 P 349.

Collateral References

Specific Performance \Leftrightarrow 25 et seq.
81 C.J.S. Specific Performance \S 30.

17-808. (8721) What parties cannot be compelled to perform. Specific performance cannot be enforced against a party to a contract in any of the following cases:

1. If he has not received an adequate consideration for the contract;
2. If it is not, as to him, just and reasonable;
3. If his assent was obtained by the misrepresentations, concealment, circumvention, or unfair practices of any party to whom performance would become due under the contract, or by any promise of such party which has not been substantially fulfilled; or,
4. If his assent was given under the influence of mistake, misapprehension, or surprise, except that where the contract provides for compensation in case of mistake, a mistake within the scope of such provision may be compensated for, and the contract specifically enforced in other respects, if proper to be so enforced.

History: En. Sec. 4417, Civ. C. 1895; re-en. Sec. 6103, Rev. C. 1907; re-en. Sec. 8721, R. C. M. 1921. Cal. Civ. C. Sec. 3391. Field Civ. C. Sec. 1894.

Consideration

A party seeking specific performance of a contract is required to set forth the consideration therefor, and the burden of proof that such consideration is inadequate is on the party resisting specific

performance. *Finlen v. Heinze*, 28 M 548, 563, 73 P 123.

Where complainant's entry on defendant's land for the purpose of locating a mining claim was wholly ineffectual as against defendant for that purpose, a contract by which complainants agreed to transfer to defendant an undivided one-third interest in the lead or lode, in consideration of defendant's transfer to plaintiffs of an undivided two-thirds inter-

est therein, together with the necessary amount of real estate covered by the location, etc., in settlement of the rights of the parties without litigation, was not based on a sufficient consideration to support a suit for specific performance under subdivision 1 of this section. *Traphagen v. Kirk*, 30 M 562, 574, 77 P 58.

Defenses to Specific Performance

The evident meaning of this section is that any one of these subdivisions furnishes a defense to an action for specific performance. In other words, when specific performance is sought against a party, he may interpose any one of the defenses named above, and if he can maintain it, he defeats the action. The burden of proof as to such defense is upon him who asserts it. *Finlen v. Heinze*, 28 M 548, 563, 73 P 123; *In re Grogan's Estate*, 38 M 540, 542, 100 P 1044.

Just and Reasonable

In an action for specific performance of a contract of sale made by a receiver appointed in a mortgage foreclosure, the

court must look to the real parties in interest and refuse relief if the contract was not just and reasonable, or if performance would operate more harshly upon the parties than its refusal would upon the plaintiff seeking performance. *Interior Securities Co. v. Campbell*, 55 M 459, 469, 178 P 582.

Negative Statements Need Not Be Avoided

All the negative statements in this section need not be avoided in a petition to compel an executor or administrator to convey, under section 91-3301. *In re Grogan's Estate*, 38 M 540, 542, 100 P 1044.

References

Cited or applied as section 6103, Revised Codes, in *Babcock v. Engel*, 58 M 597, 604, 194 P 137; *Saint et al. v. Beal*, 66 M 292, 297, 213 P 248.

Collateral References

Specific Performance↔49.
81 C.J.S. Specific Performance § 39 et seq.

17-809. (8722) What parties cannot have specific performance in their favor. Specific performance cannot be enforced in favor of a party who has not fully and fairly performed all the conditions precedent on his part to the obligation of the other party, except where his failure to perform is only partial, and either entirely immaterial, or capable of being fully compensated; in which case specific performance may be compelled, upon full compensation being made for the default.

History: En. Sec. 4418, Civ. C. 1895; re-en. Sec. 6104, Rev. C. 1907; re-en. Sec. 8722, R. C. M. 1921. Cal. Civ. C. Sec. 3392. Field Civ. C. Sec. 1895.

References

Hall v. Lommasson, 113 M 272, 284, 124 P 2d 694.

Collateral References

Specific Performance↔17.
81 C.J.S. Specific Performance § 23 et seq.

17-810. (8723) Specific performance not required when oppressive. Specific performance cannot be compelled when it would operate more harshly upon the party required to perform than its refusal would operate upon the party seeking it.

History: En. Sec. 4419, Civ. C. 1895; re-en. Sec. 6105, Rev. C. 1907; re-en. Sec. 8723, R. C. M. 1921. Field Civ. C. Sec. 1896.

References

Cited or applied as section 6105, Revised Codes, in *Interior Securities Co. v. Camp-*

bell, 55 M 459, 469, 178 P 582; *Hall v. Lommasson*, 113 M 272, 284, 124 P 2d 694.

Collateral References

Specific Performance↔16.
81 C.J.S. Specific Performance § 18 et seq.

17-811. (8724) Agreement to sell property by one who has no title. An agreement for the sale of property cannot be specifically enforced in favor of a seller who cannot give to the buyer a title free from reasonable doubt.

History: En. Sec. 4420, Civ. C. 1895;
re-en. Sec. 6106, Rev. C. 1907; re-en. Sec.
8724, R. C. M. 1921. Cal. Civ. C. Sec. 3394.
Field Civ. C. Sec. 1897.

References
Cited or applied as section 6106, Revised
Codes, in *Milwaukee Land Co. v. Ruesink*,
50 M 489, 504, 148 P 396.

17-812. (8725) Relief against parties claiming under the person bound to perform. Whenever an obligation in respect to real property would be specifically enforced against a particular person, it may be in like manner enforced against any other person claiming under him by a title created subsequently to the obligation, except a purchaser or encumbrancer in good faith and for value, and except, also, that any such person may exonerate himself by conveying all his estate to the person entitled to enforce the obligation.

History: En. Sec. 4421, Civ. C. 1895;
re-en. Sec. 6107, Rev. C. 1907; re-en. Sec.
8725, R. C. M. 1921. Cal. Civ. C. Sec. 3395.
Field Civ. C. Sec. 1898.

Collateral References
Specific Performance—19-24.
81 C.J.S. Specific Performance §§ 26-28.

CHAPTER 9

SPECIFIC RELIEF—REVISION AND RESCISSION OF CONTRACTS

- Section 17-901. When contract may be revised.
17-902. Presumption as to intent of parties.
17-903. Principles of revision.
17-904. Enforcement of revised contract.
17-905. When rescission may be adjudged.
17-906. Rescission for mistake.
17-907. Court may require party rescinding to do equity.

17-901. (8726) When contract may be revised. When, through fraud or a mutual mistake of the parties, or a mistake of one party, while the other at the time knew or suspected, a written contract does not truly express the intention of the parties, it may be revised on the application of a party aggrieved, so as to express that intention, so far as it can be done without prejudice to rights acquired by third persons, in good faith and for value.

History: En. Sec. 4430, Civ. C. 1895;
re-en. Sec. 6108, Rev. C. 1907; re-en. Sec.
8726, R. C. M. 1921. Cal. Civ. C. Sec. 3399.
Field Civ. C. Sec. 1899.

Burden of Proof

The party who seeks to revise or reform a written instrument on the ground of a mutual mistake of the parties, has the burden of establishing such mistake by clear, convincing and satisfactory evidence if he would overcome the presumption that the writing contains their final agreement and expresses their real purpose and intent. *August v. Burns*, 79 M 198, 218, 255 P 737.

Defect in Complaint Cured by Answer

Where defendant by his answer and cross complaint alleged that he was a purchaser of the land in good faith for value and without notice of any adverse interest held by plaintiffs and this was denied in reply and answer of plaintiff,

defendants supplied the issue of good faith and cannot complain of the absence of an allegation in the complaint that defendant was not a purchaser in good faith. *Strack v. Federal Land Bank*, 124 M 19, 218 P 2d 1052, 1055.

Effect of Negligence on Reformation

The mere fact that a party seeking a reformation of an instrument on the ground of mistake may himself have been negligent is not a ground for refusing relief; but if the negligence is excusable, as where plaintiff is an old man and not accustomed to transact business and defendant a much younger man of extensive business experience, relief will be granted when, in view of all the circumstances, to deny it would permit plaintiff to suffer a gross wrong at the hands of defendant. *Ayers v. Buswell*, 73 M 518, 528, 238 P 591.

Under this section, authorizing the reformation of a contract when through mutual mistake it does not truly express

the intention of the parties, the court in a mortgage foreclosure suit properly excluded one of a number of lots described by number, where it was apparent that the mortgagor did not intend to include it and the attorney of the mortgagee who drew it, in following the descriptions given in another mortgage, inadvertently added the number of the lot excluded, the circumstances having been such as to excuse the negligence of the mortgagor in failing to read the mortgage before signing it. *First State Bank v. Mussigbrod et al.*, 83 M 68, 82, 271 P 695.

Every mistake for which an instrument may be reformed involves the idea of negligence in greater or less degree, and if the negligence in failing to read the instrument is excusable under the circumstances, as where the person charged with negligence was of foreign extraction unable to read English well, and no rights of innocent third persons are involved, reformation may be had. *Bitter Root Creamery Co. v. Muntzer et al.*, 90 M 77, 87 et seq., 300 P 251.

Essentials for Reformation

In an action to reform a contract, the complaint should allege some mistake in the making of the contract, or some mistake or inadvertence in reducing its terms to writing. *Gaffney Mercantile Co. v. Hopkins*, 21 M 13, 16, 52 P 561.

To warrant reformation of a written instrument for mistake, it must appear that the parties agreed upon a certain contract; that they executed it; that the contract executed was not the one agreed upon; that the variance occurred by mistake; in what the mistake consisted, and that it was mutual. *Thielbar Realities, Inc. v. Insurance Co.*, 91 M 525, 530, 9 P 2d 469.

Proof that failure of contract to express true intention of the parties was the result of fraud, mutual mistake, or a mistake of one party which the other at the time knew or suspected, is necessary to warrant reformation of a written contract. *Brubaker v. D'Orazi*, 120 M 22, 179 P 2d 538, 542.

Extent of Remedy

The purpose of the equity of reformation is not to make a new agreement, but to establish and perpetuate the true one, and courts cannot insert a provision which was omitted with the consent of the party asking reformation, although such consent was given in reliance on an oral promise of the other party that the omission should not make any difference. *Comerford v. United States F. & G. Co.*, 59 M 243, 259, 196 P 984.

Id. Reformation of an instrument will not be decreed on the ground of mistake unless the real intent of the parties is

satisfactorily shown and the party seeking the relief was free from culpable negligence.

If a party claims that a written contract does not correctly state the true terms of the agreement, he must have it reformed and recover on it as reformed, if at all; but he cannot recover on an oral preceding agreement differing from that which was reduced to writing. *Biering et al. v. Ringling*, 78 M 145, 155, 252 P 872.

This section provides for the reformation of instruments on the ground of the mutual mistake of the parties. Section 13-706 declares that when through mistake a written contract fails to express the real intention of the parties, such intention is to be regarded and the erroneous part of the writing disregarded. Held, in an action of the character of the above, that in the nature of things a voluntary conveyance is unilateral and, therefore, lacks in mutuality, but that a court of equity under its inherent power and section 13-706, above, may grant reformation of a deed evidencing such a conveyance even though the mistake was not mutual. *Laundreville v. Mero et al.*, 86 M 43, 55, 281 P 749.

Judgment Lien Acquired After Execution of Mortgage No Bar to Reformation

The lien of a judgment is a general one and must yield to all prior equitable titles in others; hence such a lien acquired between the date of the execution of a mortgage and the bringing of an action to reform the instrument and foreclose it as reformed does not stand in the way of granting such relief. *Clack v. Clack et al.*, 98 M 552, 567, 41 P 2d 32.

Not Exclusive Remedy

Neither the remedy afforded by section 13-903, giving a party to a contract the right to rescind on the ground of fraud, among others, nor that granted by this section, under which he may have the contract reformed on the same ground, is exclusive, each being independent of the other; hence the defrauded party may elect to pursue either remedy. *Campana v. Dobry*, 69 M 240, 243, 244, 221 P 540.

Reformation Does Not Lie for Unilateral Mistake

Where a mistake in an instrument was unilateral, i. e., made only by one party to it, and not mutual, nor one which the other party by it knew or suspected, reformation did not lie. *Comerford v. United States F. & G. Co.*, 59 M 243, 259, 196 P 984.

When Acquiescence in Contract Destroys Right of Reformation

Under the rule that acquiescence in a contract after learning that it does not

represent the actual agreement, destroys the right of reformation, held, that where purchasers of land included in an irrigation district entered into the contract of purchase under alleged false representations by the vendor that the lands were not subject to liens for payment of bonds issued by the district, paid assessments for ten years without protest, they will be held to have acquiesced in the contract, barring the right of reformation. *Krueger v. Morris*, 110 M 559, 568, 107 P 2d 142.

When Reformation Lies for Mutual Mistake

Before equity will intervene to correct an alleged mutual mistake in a written instrument, the evidence of the mistake must be clear, convincing and satisfactory. *Humble v. St. John et al.*, 72 M 519, 522, 234 P 475.

Where reformation of a fire insurance policy was sought on the ground of a mutual mistake on the part of the insured and the agent of the insurer relative to the answer to the question in the application whether the building insured stood upon ground not owned by the insured, the evidence showing that plaintiff was unable to read the English language and that he advised the agent that he did not own the land but was assured that the policy "was all right," held that there was a sufficient showing that the mistake was mutual, within the meaning of this section. *Krpan v. Central Federal Fire Ins. Co.*, 87 M 345, 351, 287 P 217.

The rule declared by this section, that a written contract which through mutual mistake does not truly express the intention of the parties may be reformed, applies to a promissory note executed by the officers of a corporation for a company debt but which by such mistake made it their own obligation instead of their principal's. *Bitter Root Creamery Co. v.*

Muntzer et al., 90 M 77, 87 et seq., 300 P 251.

The mutual mistake for which a written instrument may be reformed must be reciprocal and common to both parties, each alike laboring under the same misconception. *Thielbar Realities, Inc. v. Insurance Co.*, 91 M 525, 530, 9 P 2d 469.

Where the parties to a contract agree upon its terms and conditions and through mutual mistake the writing signed by them fails to express their agreement, a court of equity will reform it. *Clack v. Clack et al.*, 98 M 552, 565, 41 P 2d 32.

Id. Both parties to a mortgage intended that it should cover all the lands of a livestock company, mortgagor. The stenographer of the mortgagee's attorney who prepared the document, in copying the description of the lands inadvertently omitted a tract of 440 acres of the total of 2,600. The mistake was not discovered until shortly before commencement of the action to reform the mortgage and enforce it as reform. Held, that the evidence warranted reformation.

References

Cited or applied as section 4430, Civil Code, in *Hogan v. Kelly*, 29 M 485, 488, 75 P 81; as section 6108, Revised Codes, in *Baum v. Northern Pacific Ry. Co.*, 55 M 219, 223, 175 P 872; *McDaniel v. Hager-Stevenson Oil Co.*, 75 M 356, 362, 243 P 582; *Whorley v. Patton-Kjose Company, Inc.*, 90 M 461, 487, 5 P 2d 210; *Heinecke v. Scott et al.*, 95 M 200, 208, 26 P 2d 167; *Whorley v. Koss*, 122 M 446, 206 P 2d 809, 811.

Collateral References

Reformation of Instruments—1 et seq. 76 C.J.S. Reformation of Instruments § 2.
Generally, see 45 Am. Jur. 581, Reformation of Instruments.

17-902. (8727) Presumption as to intent of parties. For the purpose of revising a contract, it must be presumed that all the parties thereto intended to make an equitable and conscientious agreement.

History: En. Sec. 4431, Civ. C. 1895; re-en. Sec. 6109, Rev. C. 1907; re-en. Sec. 8727, R. C. M. 1921. Cal. Civ. C. Sec. 3400. Field Civ. C. Sec. 1900.

Collateral References

Reformation of Instruments—43. 76 C.J.S. Reformation of Instruments § 82.

17-903. (8728) Principles of revision. In revising a written instrument, the court may inquire what the instrument was intended to mean, and what were intended to be its legal consequences, and is not confined to the inquiry what the language of the instrument was intended to be.

History: En. Sec. 4432, Civ. C. 1895; re-en. Sec. 6110, Rev. C. 1907; re-en. Sec. 8728, R. C. M. 1921. Cal. Civ. C. Sec. 3401. Field Civ. C. Sec. 1901.

References

Cited or applied as section 6110, Revised Codes, in *Parchen v. Chessman*, 53 M 430, 437, 164 P 531; *Humble v. St. John et al.*,

72 M 519, 522, 234 P 475; Ayers v. Buswell, 73 M 518, 528, 238 P 591; August v. Burns, 79 M 198, 218, 255 P 737.

Collateral References

Reformation of Instruments 1 et seq., 47.
76 C.J.S. Reformation of Instruments § 86 et seq.

17-904. (8729) Enforcement of revised contract. A contract may be first revised and then specifically enforced.

History: En. Sec. 4433, Civ. C. 1895; re-en. Sec. 6111, Rev. C. 1907; re-en. Sec. 8729, R. C. M. 1921. Cal. Civ. C. Sec. 3402. Field Civ. C. Sec. 1902.

Collateral References

Reformation of Instruments 48.
76 C.J.S. Reformation of Instruments § 89.

References

Cited or applied in Whorley v. Koss, 122 M 446, 206 P 2d 809, 811.

17-905. (8730) When rescission may be adjudged. The rescission of a written contract may be adjudged, on the application of a party aggrieved:

1. In any of the cases mentioned in section 13-903; or,
2. Where the contract is unlawful, for causes not apparent upon its face, and the parties were not equally in fault; or,
3. When the public interest will be prejudiced by permitting it to stand.

History: En. Sec. 4440, Civ. C. 1895; re-en. Sec. 6112, Rev. C. 1907; re-en. Sec. 8730, R. C. M. 1921. Cal. Civ. C. Sec. 3406. Field Civ. C. Sec. 1903.

148 P 315; Wilson v. Corcoran et al., 73 M 529, 532, 237 P 521; Whorley v. Patton-Kjose Co., Inc., 90 M 461, 487, 5 P 2d 210.

References

Cited or applied as section 6112, Revised Codes, in Brundy v. Canby, 50 M 454, 472,

Collateral References

Cancellation of Instruments 3 et seq.
12 C.J.S. Cancellation of Instruments § 14.

17-906. (8731) Rescission for mistake. Rescission cannot be adjudged for mere mistake, unless the party against whom it is adjudged can be restored to substantially the same position as if the contract had not been made.

History: En. Sec. 4441, Civ. C. 1895; re-en. Sec. 6113, Rev. C. 1907; re-en. Sec. 8731, R. C. M. 1921. Cal. Civ. C. Sec. 3407. Field Civ. C. Sec. 1904.

worse off than before the contract. Brundy v. Canby, 50 M 454, 477, 148 P 315.

Operation and Effect

The whole doctrine of restoration under this section and section 13-905, is equitable, and requires merely that the party against whom rescission is adjudged shall be no

Collateral References

Cancellation of Instruments 4.
12 C.J.S. Cancellation of Instruments § 27.
9 Am. Jur. 377, Cancellation of Instruments, §§ 32 et seq.

17-907. (8732) Court may require party rescinding to do equity. On adjudging the rescission of a contract, the court may require the party to whom such relief is granted to make any compensation or restoration to the other which justice may require.

History: En. Sec. 4442, Civ. C. 1895; re-en. Sec. 6114, Rev. C. 1907; re-en. Sec. 8732, R. C. M. 1921. Cal. Civ. C. Sec. 3408. Field Civ. C. Sec. 1905.

Allowance of Interest in Discretion of Court as "Justice May Require"

While, under this section, the trial court may, in an action for rescission of a contract, require the party to whom the relief

is granted to make restoration to his opponent, it is not incumbent upon it to allow or disallow interest in accordance with the strict rules of law applying to ordinary transactions, but may allow it to the vendor on certain items and to the vendee on others as "justice may require." Silfvast v. Asplund et al., 99 M 152, 159, 43 P 2d 452.

Restoration Such as Is Reasonably Possible

The object of this section and section 13-905, requiring one rescinding a contract to make compensation or restoration is to place the other party in statu quo, i. e. to place him in the same position he was in at the time of the execution of the contract, but absolute and literal restoration is not required, it being sufficient if the

restoration be such as is reasonably possible or as may be demanded by the equities of the case. *O'Keefe v. Routledge*, 110 M 138, 146, 103 P 2d 307.

Collateral References

Cancellation of Instruments \S 59.
12 C.J.S. Cancellation of Instruments \S 81.

CHAPTER 10

SPECIFIC RELIEF—CANCELLATION OF INSTRUMENTS

Section 17-1001. When cancellation may be ordered.
17-1002. Instrument obviously void.
17-1003. Cancellation in part.

17-1001. (8733) When cancellation may be ordered. A written instrument, in respect to which there is a reasonable apprehension that if left outstanding it may cause serious injury to a person against whom it is void or voidable, may, upon his application, be so adjudged, and ordered to be delivered up or canceled.

History: En. Sec. 4450, Civ. C. 1895; re-en. Sec. 6115, Rev. C. 1907; re-en. Sec. 8733, R. C. M. 1921. Cal. Civ. C. Sec. 3412. Field Civ. C. Sec. 1906.

Applicable to Oil and Gas Leases

An action to have an oil and gas lease declared terminated and canceled of record for failure of the lessee to commence drilling operations or make the stipulated payment in lieu thereof, is one in equity and falls within the provisions of this section, authorizing cancellation to remove a cloud upon title. *McNamer Realty Co. v. Sunburst etc. Co.*, 76 M 332, 344, 247 P 16; *American Surety Co. v. Butler et al.*, 86 M 584, 591, 284 P 1011.

Complaint Under This Section Held to State Cause of Action

In an action to cancel instruments claimed to constitute clouds upon the title to mining property, thus preventing plaintiff from obtaining a bidder upon execution sale under a judgment in a mechanics' lien foreclosure proceeding, complaint held insufficient to state a cause of action under this and the following section (conceding, but not deciding, that the action could be maintained under those sections), for failure to allege the facts showing the apparent validity of the instruments claimed to constitute clouds as well as the facts showing their invalidity. *Heavilin v. O'Connor et al.*, 61 M 507, 510, 202 P 1115.

Allegations of the complaint showing that a land contract sought to be canceled was of record, that the purchaser was in possession of the premises and that by its

terms the latter was shown to have an equitable interest in them, held sufficient to show that the instrument was of such a character as to constitute it a menace to plaintiff's title if left outstanding. *Hammond-Dodson Co. et al. v. Slattery*, 67 M 489, 496, 216 P 323.

Distinguished from Action to Quiet Title

In an action to quiet title under section 93-6203, as distinguished from one brought under this section to remove a cloud on title, the complaint alleging that the defendant claims an adverse estate or interest is sufficient without further defining it, whereas under the latter section the pleader must state facts disclosing the apparent validity of the instrument attacked and its actual invalidity. *Slette v. Review Publishing Co.*, 71 M 518, 521, 522, 230 P 580. See also *Hopkins v. Walker*, 244 U S 486, 490, 61 L Ed 1270, 37 S Ct 711.

Title may be cleared under this section providing for cancellation of instruments aimed at a particular instrument under a complaint pointing out the specific grounds relied upon to establish invalidity, or section 93-6203 for the purpose of quieting title under which inquiry into the whole title to the property is permissible, the court being given broad powers including that of removing clouds and canceling instruments and where the rule against collateral attack upon judgments does not apply to tax deeds issued under section 84-4151, plaintiff being entitled to introduce evidence of irregularities, defects and omissions as well as the deed itself. *San-*

born v. Lewis and Clark County, 113 M 1, 5, 120 P 2d 567.

Purpose of Action Under This Section

The purpose of an action brought under this section to have an oil and gas lease declared void and terminated by the failure of the lessee to observe its conditions, is to clear the record of an apparent cloud in the shape of an instrument which has ceased to have any effect but still remains of record, and in such a case the equitable rules as to relief from a forfeiture are not applicable. *McNamer Realty Co. v. Sunburst etc. Co.*, 76 M 332, 344, 247 P 166.

What Plaintiff Must Show to Justify Cancellation

To justify the cancellation of an instrument under this and the next succeeding section, the plaintiff must show that injury may result to him if the instrument is left outstanding; the court cannot interfere if the instrument is invalid, and its invalidity appears directly or constructively upon its face. *Hicks v. Rupp*, 49 M 40, 44, 140 P 97.

Where real estate is sold under a deed warranting title against encumbrances, the grantor may, after he has parted with title, maintain suit to have a mortgage, placed on record after he became the owner and of the existence of which he was unaware, canceled of record. *Kersten v. Coleman*, 50 M 82, 86, 144 P 1092.

The rule, that in a suit to remove a particular cloud from the plaintiff's title, the facts showing that title and the existence and invalidity of the instrument or record sought to be eliminated as a cloud are essential parts of the plaintiff's cause of action, and must be alleged in the bill, is the same in respect of suits to remove clouds under this section, as distinguished from suits to quiet title under section 9479. *Hopkins v. Walker*, 244 U S 486, 490, 61 L Ed 1270, 37 S Ct 711.

17-1002. (8734) Instrument obviously void. An instrument, the invalidity of which is apparent upon its face, or upon the face of another instrument which is necessary to the use of the former in evidence, is not to be deemed capable of causing injury, within the provisions of the last section.

History: En. Sec. 4451, Civ. C. 1895; re-en. Sec. 6116, Rev. C. 1907; re-en. Sec. 8734, R. C. M. 1921. Cal. Civ. C. Sec. 3413. Field Civ. C. Sec. 1907.

References

Cited or applied as section 6116, Revised Codes, in *Hicks v. Rupp*, 49 M 40, 44, 140 P 97; *Heavilin v. O'Connor et al.*, 61 M 507, 510, 202 P 1115; *Newman v. Association of Credit Men*, 63 M 545, 554, 208 P

The rule announced in *Glacier County v. Schlinski*, 90 M 136, 300 P 270, that in attacking a tax deed, the particular defects on which the pleader relies to defeat the deed must be clearly and specifically pointed out applies to actions brought under this section. *Sanborn v. Lewis and Clark County*, 113 M 1, 18, 120 P 2d 567.

When Insufficient to Admit Cancellation

Where plaintiff in his action to remove a cloud from the title to property had based his cause of action upon the levy of a writ of attachment, his contention on appeal that the writ was improperly levied and therefore constituted no lien upon the property deprives him of the relief asked for, since if it constituted no lien it cast no cloud which needed removal. *Newman v. Association of Credit Men*, 63 M 545, 554, 208 P 914.

Complaint in an action to remove a cloud from the title to real property, held fatally defective for failure to state facts sufficient to disclose the apparent validity of the instrument attacked and its actual invalidity. *Poulos v. Lyman Brothers Co.*, 63 M 561, 566, 208 P 598.

References

Cited or applied as section 4450, Civil Code, in *Merk v. Bowery Min. Co.*, 31 M 298, 309, 78 P 519; *Solberg v. Sunburst Oil & Gas Co. et al.*, 70 M 177, 182, 225 P 612; *Fleming v. Consolidated M. S. Co.*, 74 M 245, 254, 240 P 376; *Skinner v. Carlysle Oil Development Co.*, 80 M 464, 467, 260 P 1038; *Ryan v. Bloom*, 120 M 443, 186 P 2d 879, 881.

Collateral References

Cancellation of Instruments—1 et seq.; Quieting Title—7.

12 C.J.S. Cancellation of Instruments § 2; 74 C.J.S. Quieting Title § 13 et seq.

9 Am. Jur. 349, Cancellation of Instruments.

914; *Poulos v. Lyman Brothers Co.*, 63 M 561, 566, 208 P 598; *Hammond-Dodson Co. et al. v. Slattery*, 67 M 489, 496, 216 P 323; *Fleming v. Consolidated M. S. Co.*, 74 M 245, 254, 240 P 376.

Collateral References

Cancellation of Instruments—4; Quieting Title—7.

12 C.J.S. Cancellation of Instruments § 25; 74 C.J.S. Quieting Title § 12.

17-1003. (8735) Cancellation in part. Where an instrument is evidence of different rights or obligations, it may be canceled in part, and allowed to stand for the residue.

History: En. Sec. 4452, Civ. C. 1895; re-en. Sec. 6117, Rev. C. 1907; re-en. Sec. 8735, R. C. M. 1921. Cal. Civ. C. Sec. 3414. Field Civ. C. Sec. 1908.

Collateral References

Cancellation of Instruments 56; Quieting Title 49.

12 C.J.S. Cancellation of Instruments § 78; 74 C.J.S. Quieting Title § 95.

CHAPTER 11

PREVENTIVE RELIEF—INJUNCTIONS

Section 17-1101. Preventive relief—how granted.

17-1101. (8736) Preventive relief—how granted. Preventive relief is granted by injunction, provisional or final.

History: En. Sec. 4460, Civ. C. 1895; re-en. Sec. 6118, Rev. C. 1907; re-en. Sec. 8736, R. C. M. 1921. Cal. Civ. C. Sec. 3420. Field Civ. C. Sec. 1909.

Collateral References

Injunctions 1 et seq.

43 C.J.S. Injunction §§ 1, 12.

28 Am. Jur. 189, Injunction, generally.

Cross-Reference

Injunctions, sec. 93-4201 et seq.

TITLE 18

DEBTOR AND CREDITOR

- Chapter 1. Debtor and creditor—definitions and general provisions, 18-101 to 18-105.
2. Bulk sales, 18-201 to 18-205.
3. Assignments for benefit of creditors, 18-301 to 18-330.

CHAPTER 1

DEBTOR AND CREDITOR—DEFINITIONS AND GENERAL PROVISIONS

- Section 18-101. Who is a debtor.
18-102. Who is a creditor.
18-103. Contracts of debtor are valid.
18-104. Payments in preference.
18-105. Relative rights of different creditors.

18-101. (8598) Who is a debtor. A debtor, within the meaning of this chapter, is one who, by reason of an existing obligation, is or may become liable to pay money to another, whether such liability is certain or contingent.

History: En. Sec. 4480, Civ. C. 1895; re-en. Sec. 6122, Rev. C. 1907; re-en. Sec. 8598, R. C. M. 1921. Cal. Civ. C. Sec. 3429. Field Civ. C. Sec. 1913.

Cross-References

Arrest of debtor, secs. 93-5901, 93-5902.
Joint debtors, proceedings against, secs. 93-8101 to 93-8108.

Representation of credit of third person, admissibility of evidence, sec. 93-1401-8.

References

Harrison v. Riddell et al., 64 M 466, 478, 210 P 460; Security State Bank v. McIntyre, 71 M 186, 195, 228 P 618; State v. McGraw, 74 M 152, 163, 240 P 812; Merchants' Nat. Bk. v. Dawson County, 93 M 310, 323, 19 P 2d 892; Beedle v. Carolan, 115 M 587, 590, 148 P 2d 559.

Collateral References

Fraudulent Conveyances—54.
37 C.J.S. Fraudulent Conveyances § 99 et seq.

18-102. (8599) Who is a creditor. A creditor, within the meaning of this chapter, is one in whose favor an obligation exists, by reason of which he is, or may become, entitled to the payment of money.

History: En. Sec. 4481, Civ. C. 1895; re-en. Sec. 6123, Rev. C. 1907; re-en. Sec. 8599, R. C. M. 1921. Cal. Civ. C. Sec. 3430. Field Civ. C. Sec. 1914.

References

Cited or applied as section 6123, Revised Codes, in Aetna Accident & Liability Co. v. Miller, 54 M 377, 387, 170 P 760; Brown v. American Bonding Co., 210 Fed

844, 846; Harrison v. Riddell et al., 64 M 466, 478, 210 P 460; Security State Bank v. McIntyre, 71 M 186, 195, 228 P 618; Merchants' Nat. Bk. v. Dawson County, 93 M 310, 323, 19 P 2d 892.

Collateral References

Fraudulent Conveyances—206 et seq.
37 C.J.S. Fraudulent Conveyances § 63 et seq.

18-103. (8600) Contracts of debtor are valid. In the absence of fraud, every contract of a debtor is valid against all his creditors, existing or subsequent, who have not acquired a lien on the property affected by such contract.

History: En. Sec. 4482, Civ. C. 1895; re-en. Sec. 6124, Rev. C. 1907; re-en. Sec. 8600, R. C. M. 1921. Cal. Civ. C. Sec. 3431. Field Civ. C. Sec. 1915.

References

Cited or applied as section 6124, Revised Codes, in *Aetna Accident & Liability Co. v. Miller*, 54 M 377, 387, 170 P 760; *Brown v. American Bonding Co.*, 210 Fed 844, 846; *Harrison v. Riddell et al.*, 64 M 466, 478, 210 P 460.

Collateral References

Fraudulent Conveyances 1 et seq.
37 C.J.S. *Fraudulent Conveyances* §§ 1, 7.

18-104. (8601) Payments in preference. A debtor may pay one creditor in preference to another, or may give to one creditor security for the payment of his demand in preference to another.

History: En. Sec. 4483, Civ. C. 1895; re-en. Sec. 6125, Rev. C. 1907; re-en. Sec. 8601, R. C. M. 1921. Cal. Civ. C. Sec. 3432. Field Civ. C. Sec. 1916.

Applies Also to Insolvent Debtor

The rule declared by this section that a debtor may pay one creditor in preference to another, provided that other be not a preferred creditor, applies to an insolvent debtor as well as to a solvent one, and under it an insolvent debtor may transfer property in payment of a debt justly due though he knows that the effect of the transaction will be to defeat another in the collection of his debt. *Hale et al. v. Belgrade Co., Ltd.*, et al., 75 M 99, 112, 242 P 425; *Department of Agriculture, etc. v. DeVore*, 91 M 47, 53, 6 P 2d 125.

Form of Preference Immaterial

In the absence of positive statutory provision declaring otherwise, if a preference given by a debtor to his creditor is in other particulars unobjectionable, the form of the transaction by which it is made is immaterial. *Department of Agriculture, etc. v. DeVore*, 91 M 47, 53, 6 P 2d 125.

Operation and Effect

If the provision of this section, that a debtor may pay or secure one creditor in preference to another, has any relation to cases of insolvency, it is limited by the rule stated in section 18-307. *Aetna Accident & Liability Co. v. Miller*, 54 M 377, 387, 170 P 760.

An alleged fraudulent transfer of property by a husband to his wife should be

closely scrutinized on account of the opportunities afforded by the relation, but a husband, honestly indebted to his wife, may give her a valid preference either by transfer of money or property in payment or by giving security, to the same extent as he may prefer any other creditor, and such preference is not of itself fraudulent as to other creditors of the husband. *Harrison v. Riddell et al.*, 64 M 466, 478, 210 P 460.

While a debtor may prefer one creditor over another, where he transfers to one creditor in payment of a debt property the value of which is greatly in excess of the amount due, it is a badge of fraud affording strong evidence thereof. *Security State Bank v. McIntyre*, 71 M 186, 204, 228 P 618; *Godfrey L. Cabot, Inc. v. Gas Products Co.*, 93 M 497, 509, 19 P 2d 878.

Under this section, an insolvent debtor may prefer one creditor to another; the preference may be made by conveyance of property, real or personal, either directly to the creditor or to a third person for the creditors' benefit, and, if made, the property is not subject to seizure under legal process. *Costello v. Shields*, 99 M 335, 43 P 2d 879.

References

Cited or applied as section 6125, Revised Codes, in *Brown v. American Bonding Co.*, 210 Fed 844, 846; *Mieyr v. Federal Surety Co. et al.*, 97 M 503, 509, 34 P 2d 982.

Collateral References

Fraudulent Conveyances 115.
37 C.J.S. *Fraudulent Conveyances* § 235 et seq.

18-105. (8602) Relative rights of different creditors. Where a creditor is entitled to resort to each of several funds for the satisfaction of his claim, and another person has an interest in, or is entitled as a creditor to resort to some, but not all of them, the latter may require the former to seek satisfaction from those funds to which the latter has no such claim, so far as it can be done without impairing the right of the former to complete satisfaction, and without doing injustice to third persons.

History: En. Sec. 4484, Civ. C. 1895; re-en. Sec. 6126, Rev. C. 1907; re-en. Sec. 8602, R. C. M. 1921. Cal. Civ. C. Sec. 3433. Field Civ. C. Sec. 1917.

Collateral References

56 C.J.S. *Marshaling Assets and Securities* § 1 et seq.

CHAPTER 2

BULK SALES

- Section 18-201. Sale of goods, wares, merchandise and trade fixtures, and personal property, in bulk—seller to furnish statement concerning creditors.
 18-202. Sale without statement and notification fraudulent and void.
 18-203. Penalty for false statement.
 18-204. What constitutes a sale in bulk within this act.
 18-205. Exceptions.

18-201. (8607) Sale of goods, wares, merchandise and trade fixtures, and personal property, in bulk—seller to furnish statement concerning creditors. (1) It shall be the duty of every person who shall bargain for or purchase, in bulk, for cash or on credit, any stock of goods, wares, merchandise and trade fixtures, and personal property used in the business of the vendor, before paying to the vendor, or his agent or representative, any part of the purchase price thereof, or any promissory note or other evidence of indebtedness therefor, to demand of and receive from such vendor, or his agent or representative, or if the vendor or agent or representative be a corporation, then from the president, vice-president, secretary or managing agent of such corporation, and it shall be the duty of the vendor, or his agent or representative, to give the vendee a written statement, sworn to as hereinafter provided, which statement shall contain:

1. The names and last known addresses of the creditors of the vendor who have claims due or owing, or which shall become due or owing, from the vendor for or on account of goods, wares, merchandise and trade fixtures, and personal property used in the business of the vendor, purchased by the vendor upon credit.

2. The names and last known addresses of the creditors of the vendor from whom the vendor borrowed money which was used in the business of the vendor.

3. The correct amount of the indebtedness due or owing or which shall become due or owing, by the vendor to each of such creditors.

4. A true and detailed inventory of the goods, wares, merchandise and trade fixtures, and personal property used in the business, sold by the vendor to the vendee.

5. The correct sale price.

The statement shall be signed by the vendor, his agent or representative, and shall be verified by an oath substantially as follows:

State of Montana }
 County of..... } ss.

Before me personally appeared.....

(vendor, or agent or representative, as the case may be), who being by me first duly sworn upon his oath doth depose and say: (That the annexed statement is full, true and correct, and contains all of the matters and things required by law to be stated therein; that there are no creditors of the vendor holding claims due or owing, or which shall become due or owing, for or on account of goods, wares, merchandise and trade fixtures, and personal property used in the business of the vendor purchased upon credit, and there are no creditors of the vendor holding claims due or owing, or which shall become due or owing, for or on account of

money borrowed by the vendor and used in the business of the vendor, other than as set forth in said statement.)

Subscribed and sworn to before me this.....day of
..... 19.... (Name and title of officer administering oath.)

(2) It shall also be the duty of each person who shall bargain for or purchase, in bulk, for cash or on credit, any stock of goods, wares, merchandise and trade fixtures and personal property used in the business of the vendor, before paying to the vendor, or his agent or representative, or delivering to the vendor, or his agent or representative, any part of the purchase price thereof, or any promissory note or other evidence of indebtedness thereof, to notify personally, or by registered mail, each creditor whose name is contained in the list to be furnished by the seller, that he is about to purchase such stock of goods, wares, merchandise and trade fixtures, and personal property used in the vendor's business, describing it generally and by location, and the name of owner, such notice to be mailed or given not less than ten days prior to paying for such stock of goods, wares, merchandise and trade fixtures, and personal property used in the vendor's business, and any creditor whose name has been omitted from such list may give written notice of his claim to the person making the purchase, and shall be entitled to share equally with other creditors benefited by such act.

History: En. Sec. 1, Ch. 145, L. 1907; re-en. Sec. 6131, Rev. C. 1907; re-en. Sec. 8607, R. C. M. 1921; amd. Sec. 1, Ch. 106, L. 1931.

Cross-Reference

Fraudulent conveyances, secs. 29-101 to 29-210.

Constitutionality

The bulk sales law is within the state's police power and is constitutional; it does not deprive a merchant of his property without due process of law, nor of the equal protection of the laws. *Wheeler & Motter Merc. Co. v. Moon*, 49 M 307, 311, 141 P 665.

Inapplicable to Claim Arising Ex Delicto

Held, that the bulk sales law (secs. 18-201 to 18-205), applies only to claims arising ex contractu, and not to unliquidated claims ex delicto, such as a claim for damages for a personal injury. *Harrison v. Riddell et al.*, 64 M 466, 472 et seq., 210 P 460.

Operation in General

Where a merchant has transferred his stock without complying with the bulk sales law, and a judgment creditor of the merchant takes out an execution, the service of a copy of the execution upon the transferee, together with a notice that any personal property in his possession or under his control belonging to the mer-

chant, is attached in pursuance of such writ, operates to fasten upon such property a specific lien in favor of the plaintiff sufficient to enable him to prosecute a creditor's bill against such transferee or garnishee. *Wheeler & Motter Merc. Co. v. Moon*, 49 M 307, 316, 141 P 665.

Id. The failure of a buyer of a stock of merchandise in bulk to comply with the provisions of the bulk sales law converts him into a trustee of the property bought, to the extent of the creditor's claim against the seller, and in case the purchased goods have been mingled with those of the buyer so as to destroy their identity, or converted into cash, equity will hold him for their value.

Purpose of Act

The bulk sales law was enacted to regulate transfers by merchants of their stocks of goods, kept for sale in the ordinary course of business. *Ferrat v. Adamson*, 53 M 172, 179, 163 P 112.

The bulk sales law has but one aim, viz., to prevent a sale of goods in bulk until the creditors of the seller have been paid in full. *Harrison v. Riddell et al.*, 64 M 466, 472 et seq., 210 P 460.

Collateral References

Fraudulent Conveyances—47.

37 C.J.S. Fraudulent Conveyances § 475 et seq.

24 Am. Jur. 350-366, Fraudulent Conveyances, §§ 237-263.

Necessity of participation by the grantee or transferee in the fraud of the grantor or transferor in order to avoid a voluntary conveyance or transfer as against creditors. 17 ALR 728.

Claim of public for taxes as within protection of Bulk Sales Law. 41 ALR 973.

Presumption of fraud under Bulk Sales Law as prima facie or conclusive. 75 ALR 674.

Omission of name of creditor from list of creditors which seller is required by Bulk Sales Law to furnish to purchaser, as affecting rights and remedies under that law. 83 ALR 1140.

Character or class of creditors within contemplation of Bulk Sales Law. 84 ALR 1406 and 102 ALR 565.

Transfer of property contrary to Bulk Sales Law as affecting status of transferee or person whom he represents, as a creditor, or his rights to preference as such. 102 ALR 686.

Fixtures as within contemplation of bulk sales or bulk mortgage act. 118 ALR 847.

Garnishment as remedy in case of violation of Bulk Sales Law. 155 ALR 1061.

Right of purchaser to decline performance of contract for sale of business or goods because of seller's failure to comply with Bulk Sales Law. 24 ALR 2d 1030.

Sales of "off season" or "obsolete" merchandise as within scope of Bulk Sales Law. 36 ALR 2d 1141.

18-202. (8608) Sale without statement and notification fraudulent and void. Whenever any person shall bargain for or purchase, in bulk, for cash or on credit, any stock of goods, wares, merchandise and trade fixtures, and personal property used in the business of the vendor, and shall pay any part of the purchase price, or execute and deliver to the vendor, or to his order, or to any person for his use, any promissory note or other evidence of indebtedness for said purchase price, or any part thereof, without first having demanded and received from the vendor, or his agent or representative, the statement provided for in section 18-201, verified as therein provided, and without notifying each creditor, as provided for in section 18-201, and without paying or seeing that the purchase money is applied to the payment of the claims of such creditors of the vendor, as shown in such verified statement, pro rata, and including those creditors who were not named in the list but gave written notice that they were creditors of the vendor, such sale or transfer shall be fraudulent and void as to such creditors.

History: En. Sec. 2, Ch. 145, L. 1907; re-en. Sec. 6132, Rev. C. 1907; amd. Sec. 1, Ch. 128, L. 1915; re-en. Sec. 8608, R. C. M. 1921; amd. Sec. 2, Ch. 106, L. 1931.

References

Cited or applied as section 6132, Revised Codes, before amendment, in *Wheeler & Motter Merc. Co. v. Moon*, 49 M 307, 310, 141 P 665.

18-203. (8609) Penalty for false statement. Any vendor of any stock of goods, wares, merchandise and trade fixtures, and personal property used in the business of the vendor, in bulk, or any person who is acting for or on behalf of any vendor, who shall knowingly or wilfully make and deliver, or cause to be made and delivered, a statement and verification as provided in section 18-201, which shall not include the names of all creditors of such vendor called for by said section 18-201, with the correct amount due or owing, or which shall become due or owing, to each of such creditors, or which shall contain any false or untrue statement, shall be deemed guilty of perjury, and, upon conviction, shall be punished by imprisonment in the penitentiary for not less than one nor more than five years, or shall be fined in any sum not exceeding one thousand dollars.

Collateral References

Fraudulent Conveyances 47.
37 C.J.S. Fraudulent Conveyances, § 477.

Defenses to attack on sale in bulk on ground of violation of Bulk Sales Act. 15 ALR 2d 937.

Stockholders of corporation which transfers its assets as creditors within Bulk Sales Act. 16 ALR 2d 1315.

History: En. Sec. 3, Ch. 145, L. 1907; re-en. Sec. 6133, Rev. C. 1907; re-en. Sec. 8609, R. C. M. 1921; amd. Sec. 3, Ch. 106, L. 1931.

References

Cited or applied as section 6133, Revised Codes, in *Wheeler & Motter Merc. Co. v. Moon*, 49 M 307, 310, 141 P 665.

18-204. (8610) What constitutes a sale in bulk within this act. A sale in bulk, in contemplation of this act, shall be deemed to be any sale in one transaction of an entire stock of goods, wares, merchandise or trade fixtures, or personal property, or of an entire stock of a particular character of goods, wares, merchandise or trade fixtures, or personal property of the vendor's business; provided, however, that if such vendor produces and delivers a written waiver of the provisions of this act from his creditors, as shown by such verified statements, then in that case the provisions of this act shall not apply.

History: En. Sec. 4, Ch. 145, L. 1907; re-en. Sec. 6134, Rev. C. 1907; re-en. Sec. 8610, R. C. M. 1921; amd. Sec. 4, Ch. 106, L. 1931.

References

Cited or applied as section 6134, Revised Codes, in *Wheeler & Motter Merc. Co. v. Moon*, 49 M 307, 310, 141 P 665; *Harrison v. Riddell et al.*, 64 M 466, 476, 210 P 460.

Collateral References

Defenses to attack on sale in bulk on ground of violation of Bulk Sales Act. 15 ALR 2d 937.

Sales of "off season" or "obsolete" merchandise as within scope of Bulk Sales Law. 36 ALR 2d 1141.

18-205. (8611) Exceptions. Nothing in this act contained shall apply to executors, administrators, receivers, or any public officer acting under judicial process.

History: En. Sec. 5, Ch. 145, L. 1907; re-en. Sec. 6135, Rev. C. 1907; re-en. Sec. 8611, R. C. M. 1921.

References

Cited or applied as section 6135, Revised Codes, in *Wheeler & Motter Merc. Co. v. Moon*, 49 M 307, 310, 141 P 665; *Ferrat v. Adamson*, 53 M 172, 179, 163 P 112.

CHAPTER 3

ASSIGNMENTS FOR BENEFIT OF CREDITORS

- Section** 18-301. When debtor may execute assignment.
 18-302. Insolvency, what constitutes.
 18-303. Certain transfers not affected.
 18-304. What debts may be secured.
 18-305. Preference may be given for wages.
 18-306. Preference must be absolute.
 18-307. Certain rights not affected by preferences in assignment.
 18-308. Joint and separate debts.
 18-309. Assignment—when void.
 18-310. The instrument of assignment.
 18-311. Compliance with provisions of last section necessary to validity of assignment.
 18-312. Assignee takes subject to rights of third parties.
 18-313. Inventory required.
 18-314. Verification of inventory—assignee to file, when—removal of assignee for failure to file—inspection of assignor's books and papers.
 18-315. Recording assignment and filing inventory.
 18-316. Same—more than one assignor recording assignment.
 18-317. Effect of omitting to record.
 18-318. Assignment of real property.
 18-319. Bond of assignees.
 18-320. Conditions of disposal and conversion.

- 18-321. Notice to creditors to present claims.
- 18-322. Notices to parties interested in the estate as creditors or otherwise.
- 18-323. Duties of assignee.
- 18-324. Power of court.
- 18-325. Further security required.
- 18-326. Accounting of assignee.
- 18-327. Property exempt.
- 18-328. Compensation.
- 18-329. Assignees protected for acts done in good faith.
- 18-330. Assent of creditors necessary to modification of assignment.

18-301. (8612) When debtor may execute assignment. An insolvent debtor may, in good faith, execute an assignment of property to one or more assignees, in trust for the satisfaction of his creditors, in conformity to the provisions of this chapter; subject, however, to the provisions of this code relative to trusts and to fraudulent transfers, and to the restrictions imposed by law upon assignments by special partnerships, by corporations, or by other specific classes or persons.

History: En. Sec. 4510, Civ. C. 1895; re-en. Sec. 6136, Rev. C. 1907; re-en. Sec. 8612, R. C. M. 1921. Cal. Civ. C. Sec. 3449. Field Civ. C. Sec. 1924.

Cross-Reference

Fraudulent conveyances, secs. 29-101 to 29-210.

Differentiation Between Composition and Assignment for Benefit of Creditors

The distinction between an assignment for the benefit of creditors, and a composition with creditors, is that the latter requires the assent of the creditors, while the former does not. *Pioneer M. Corp. v. Larabie Bros. Bankers*, 99 M 358, 362, 43 P 2d 884.

Operation and Effect

One who has been appointed by the court the successor of an assignee of an insolvent may be sued without leave of court. *Babcock v. Maxwell*, 21 M 507, 513, 54 P 943.

Id. The provisions of this chapter merely regulate common-law assignments for the benefit of creditors.

Neither an original assignee nor his successor, as such, is a receiver. *Babcock v. Maxwell*, 21 M 507, 513, 54 P 943. See *Aetna Accident & Liability Co. v. Miller*, 54 M 377, 389, 170 P 760.

The rule of common law still exists under this and subsequent sections to the effect that the execution of an assignment for the benefit of creditors is no bar to an action by a creditor against the assignor, and does not affect the right of the creditor to proceed to judgment after the assignment is made. *Acme Harvesting Co. v. Benedict*, 58 M 110, 190 P 287.

Held, that under sections 18-301 to 18-330, whereby a complete procedure for the

administration and settlement of estates assigned for the benefit of creditors is provided, the district court of the county in which an assignment is made has exclusive jurisdiction, both in cases at law and in equity, arising out of the assignment and relating to the distribution of the assets of the estate, and that therefore an action against an assignee to establish a claim against the estate in his charge in a county other than that in which the assignment proceedings were pending was properly dismissed for lack of jurisdiction. *Stanton Bk. v. Northern Mont. Assn. etc.*, 77 M 153, 158, 250 P 596. See also *Patrick & Co. v. McDonnell*, 61 M 236, 241, 201 P 1009.

References

Cited or applied as section 4510, Civil Code, in *Babcock v. Maxwell*, 29 M 31, 33, 74 P 64; *Patrick & Co. v. McDonnell*, 61 M 236, 241, 201 P 1009; *State v. District Court*, 74 M 34, 36, 237 P 523; *In re Halvorson Mercantile Co.*, 112 M 563, 566, 118 P 2d 1047.

Collateral References

Assignments for Benefit of Creditors—1 et seq.

6 C.J.S. Assignments for Benefit of Creditors §§ 1, 5 et seq.

4 Am. Jur. 335 et seq. Assignments for Benefit of Creditors.

Validity and effect of provisions in assignments for creditors authorizing assignees to continue assignor's business. 23 ALR 199.

Right of receiver, assignee, or trustee in bankruptcy to possession and administration of collateral validly pledged by his insolvent. 28 ALR 409, at p. 413.

18-302. (8613) Insolvency, what constitutes. A debtor is insolvent, within the meaning of this chapter, when he is unable to pay his debts from his own means, as they become due.

History: En. Sec. 4511, Civ. C. 1895; re-en. Sec. 6137, Rev. C. 1907; re-en. Sec. 8613, R. C. M. 1921. Cal. Civ. C. Sec. 3450. Field Civ. C. Sec. 1925.

References

Cited or applied as section 4511, Civil Code, in *Stadler v. First National Bank*, 22 M 190, 219, 56 P 111.

Collateral References

Assignments for Benefit of Creditors 26.

6 C.J.S. Assignments for Benefit of Creditors § 8.

18-303. (8614) Certain transfers not affected. The provisions of this chapter do not prevent a person residing in another state or country from making there, in good faith, and without intent to evade the laws of this state, a transfer of property situated within it; nor do they affect the power of a person, although insolvent, and within this state, to transfer property to a particular creditor for the purpose of paying or securing the whole or a part of a debt owing to such creditor, whether in his own right or otherwise.

History: En. Sec. 4512, Civ. C. 1895; re-en. Sec. 6138, Rev. C. 1907; re-en. Sec. 8614, R. C. M. 1921. Cal. Civ. C. Sec. 3451. Field Civ. C. Sec. 1926.

References

Department of Agriculture etc. v. *DeVore*, 91 M 47, 54, 6 P 2d 125.

Collateral References

Assignments for Benefit of Creditors 23.

6 C.J.S. Assignments for Benefit of Creditors § 9.

4 Am. Jur. 397, Assignments for Benefit of Creditors, §§ 122 et seq.

Right of receiver, assignee or trustee in bankruptcy to possession and administration of collateral validly pledged by his insolvent. 28 ALR 409, at page 413.

18-304. (8615) What debts may be secured. An assignment for the benefit of creditors may provide for any subsisting liability of the assignor which he might lawfully pay, whether absolute or contingent.

History: En. Sec. 4513, Civ. C. 1895; re-en. Sec. 6139, Rev. C. 1907; re-en. Sec. 8615, R. C. M. 1921. Cal. Civ. C. Sec. 3452. Field Civ. C. Sec. 1927.

Collateral References

Assignments for Benefit of Creditors 28.

6 C.J.S. Assignments for Benefit of Creditors § 13.

18-305. (8616) Preference may be given for wages. In all assignments of property made by any person, association, corporation, copartnership, chartered company, or corporation, to trustees or assignees on account of inability of the assignor or assignors at the time of the assignment to pay his or their debts, or in proceedings in insolvency, the wages of the miners, mechanics, salesmen, servants, clerks, or laborers employed by such assignor or assignors for services rendered within four (4) months immediately previous to such assignment, not to exceed the actual amount owed for each person, are preferred claims, and must be paid by such trustees or assignees before any other creditor or creditors of such assignor.

History: En. Sec. 2050, 5th Div. Comp. Stat. 1887; re-en. Sec. 4514, Civ. C. 1895; re-en. Sec. 6140, Rev. C. 1907; re-en. Sec. 8616, R. C. M. 1921; amd. Sec. 6, Ch. 109, L. 1943.

Operation and Effect

It is no objection to a complaint in an action by a laborer to enforce his claim that it alleges an assignment to a creditor directly for his sole benefit, and not

as a trustee or for the benefit of creditors. *Flanders v. Murphy*, 10 M 398, 400, 25 P 1052; *Marshall v. Livingston Nat. Bank*, 11 M 351, 364, 28 P 312.

Where the effect of an instrument conveying personal property is a transfer of a debtor's property to a creditor, with power to make an immediate sale of the same and render the overplus, after satisfying the debt therein described, to the debtor, which debt is made to be due at once, the transaction, though under the name and in the form of a chattel mortgage, will be regarded as an assignment and within the operation of a statute making the wages of an employee of the assignor a preferred claim where the services were rendered within sixty days immediately preceding such assignment. *Marshall v. Livingston Nat. Bank*, 11 M 351, 361, 28 P 312.

Where there is no evidence in the record, and the findings of the court bring

the plaintiff within the operation of this section, a judgment for plaintiff against an assignee for the benefit of creditors will be affirmed on the authority of *Flanders v. Murphy*, 10 M 398, 25 P 1052, and *Marshall v. Livingston Nat. Bank*, 11 M 351, 28 P 312; *Knatz v. Wise*, 16 M 555, 557, 41 P 710.

This section deals with insolvency proceedings, and into them injects an automatic preference in favor of wage claims to an amount not exceeding two hundred dollars each; but this at most could amount to nothing more than an assent by the state to share its preference in such cases with such claims. *Aetna Accident & Liability Co. v. Miller*, 54 M 377, 387, 170 P 760.

References

Cited or applied as section 6140, Revised Codes, in *Brown v. American Bonding Co.*, 210 Fed 844, 846.

Collateral References

4 Am. Jur. 397, Assignments for Benefit of Creditors, §§ 122 et seq.

18-306. (8617) Preference must be absolute. A preference, in an assignment for the benefit of creditors, can only be given absolutely, and without reserving any power of revocation.

History: En. Sec. 4515, Civ. C. 1895; re-en. Sec. 6141, Rev. C. 1907; re-en. Sec. 8617, R. C. M. 1921. **Field Civ. C. Sec. 1929.**

18-307. (8618) Certain rights not affected by preferences in assignment. No provision in an assignment, giving a preference to a creditor, can affect or impair any right of another creditor to priority of payment, whether created by law or arising from an obligation or transaction of the parties.

History: En. Sec. 4516, Civ. C. 1895; re-en. Sec. 6142, Rev. C. 1907; re-en. Sec. 8618, R. C. M. 1921. **Field Civ. C. Sec. 1930.**

Operation and Effect

The state is not bound by the general language of a statute which tends to restrain or to diminish its powers, rights, or interests; its right to a preference claim, on a fund collected as taxes and held by

a bank cannot, as against general creditors of the bank, be thus defeated. *Aetna Accident & Liability Co. v. Miller*, 54 M 377, 388, 170 P 760.

Collateral References

Assignments for Benefit of Creditors § 330 et seq.

6 C.J.S. Assignments for Benefit of Creditors § 353 et seq.

18-308. (8619) Joint and separate debts. Joint, or joint and several debtors, can prefer their joint creditors only out of joint property; and can prefer the individual creditors of each only out of the separate property of each.

History: En. Sec. 4517, Civ. C. 1895; re-en. Sec. 6143, Rev. C. 1907; re-en. Sec. 8619, R. C. M. 1921. **Field Civ. C. Sec. 1931.**

18-309. (8620) Assignment—when void. An assignment for the benefit of creditors is void against any creditor of the assignor not assenting thereto in the following cases:

1. If it give a preference dependent upon any condition or contingency, or with any power of revocation reserved.

2. If it tend to coerce any creditor to release or compromise his demand.

3. If it provide for the payment of any claim known by the assignor to be false or fraudulent, or for the payment of more upon any claim than is known to be justly due from the assignor.

4. If it reserve any interest in the assigned property, or in any part thereof, to the assignor, or for his benefit, before all existing debts are paid.

5. If it confer upon the assignee any power which, if exercised, might prevent or delay the immediate conversion of the assigned property to the purposes of the trust.

6. If it exempt him from liability for neglect of duty or misconduct.

7. If it violate section 86-302 of this code.

History: En. Sec. 4518, Civ. C. 1895; re-en. Sec. 6144, Rev. C. 1907; re-en. Sec. 8620, R. C. M. 1921. Cal. Civ. C. Sec. 3457. Based on Field Civ. C. Sec. 1932.

References

Galbraith v. Kline, 7 F 2d 682.

Collateral References

4 Am. Jur. 352, Assignments for Benefit of Creditors, §§ 31 et seq.

Validity and effect of provisions in assignments for creditors authorizing assignee to continue assignor's business. 23 ALR 199.

18-310. (8621) The instrument of assignment. An assignment for the benefit of creditors must be in writing, subscribed by the assignor, or by his agent thereto authorized by writing. It must be acknowledged, or proved and certified, in the mode prescribed by the chapter on recording transfers of real property, and recorded as required by sections 18-315 and 18-316; but recording in one county constitutes a compliance with the last-mentioned sections. The assignment must be accompanied by the affidavit of the assignor and assignee that such assignment is made in good faith, for the benefit of the creditors of the assignor, and without any design to hinder, delay, or defraud such creditors. The assent of the assignee, subscribed and acknowledged by him, must appear in writing, embraced in, or at the end of, or indorsed upon, the assignment, before the same is recorded, and, if separate from the assignment, must be duly acknowledged.

History: En. Sec. 4519, Civ. C. 1895; re-en. Sec. 6145, Rev. C. 1907; re-en. Sec. 8621, R. C. M. 1921. Cal. Civ. C. Sec. 3458. Based on Field Civ. C. Sec. 1933.

Collateral References

Assignments for Benefit of Creditors 52-84.

6 C.J.S. Assignments for Benefit of Creditors §§ 107-111, 113, 117.

18-311. (8622) Compliance with provisions of last section necessary to validity of assignment. Unless the provisions of the last section are complied with, an assignment for the benefit of creditors is void against every creditor of the assignor not assenting thereto.

History: En. Sec. 4520, Civ. C. 1895; re-en. Sec. 6146, Rev. C. 1907; re-en. Sec.

8622, R. C. M. 1921. Cal. Civ. C. Sec. 3459. Field Civ. C. Sec. 1934.

18-312. (8623) Assignee takes subject to rights of third parties. An assignee for the benefit of creditors is not to be regarded as a purchaser for value, and has no greater rights than his assignor has, in respect to things in action transferred by the assignment.

History: En. Sec. 4521, Civ. C. 1895; re-en. Sec. 6147, Rev. C. 1907; re-en. Sec. 8623, R. C. M. 1921. Cal. Civ. C. Sec. 3460. Field Civ. C. Sec. 1935.

Operation and Effect

An assignee for the benefit of creditors, to whom is assigned the title to stock pledged by the assignor, notice of the as-

signment being given to the pledgee, stands in the shoes of his assignor, in so far as his rights as a pledgor are concerned. Such assignee, in making a sale for cash, may set aside a sale to one, who could pay but a small part of the amount bid, and may resell the property on a smaller cash bid. Such assignee may redeem property pledged by the assignor. *Durfee v. Harper*, 22 M 354, 368, 56 P 582.

An assignee for the benefit of creditors cannot attack a previous transfer by the assignor as in fraud of creditors. *Babcock v. Maxwell*, 29 M 31, 33, 74 P 64.

Collateral References

Assignments for Benefit of Creditors 215 et seq.

6 C.J.S. Assignments for Benefit of Creditors § 181 et seq.

18-313. (8624) Inventory required. Within twenty days after an assignment is made for the benefit of creditors, the assignor must make and file, in the manner prescribed by section 18-315, a full and true inventory, showing:

1. All the creditors of the assignor;
2. The place of residence of each creditor, if known to the assignor; or if not known, that fact must be stated;
3. The sum owing to each creditor and the nature of each debt or liability, whether arising on written security, account, or otherwise;
4. The true consideration of the liability in each case, and the place where it arose;
5. Every existing judgment, mortgage, or other security for the payment of any debt or liability of the assignor;
6. All property of the assignor at the date of the assignment, which is exempt by law from execution; and,
7. All of the assignor's property at the date of the assignment, both real and personal, of every kind, not so exempt, and the encumbrances existing thereon, and all vouchers and securities relating thereto, and the value of such property, according to the best knowledge of the assignor.

History: En. Sec. 4522, Civ. C. 1895; re-en. Sec. 6148, Rev. C. 1907; re-en. Sec. 8624, R. C. M. 1921. Cal. Civ. C. Sec. 3461. Field Civ. C. Sec. 1936.

References

In re *Halvorson Mercantile Co.*, 112 M 563, 564, 118 P 2d 1047.

Collateral References

Assignments for Benefit of Creditors 215 et seq.

6 C.J.S. Assignments for Benefit of Creditors § 116.

4 Am. Jur. 411, Assignments for Benefit of Creditors, § 143.

18-314. (8625) Verification of inventory—assignee to file, when—removal of assignee for failure to file—inspection of assignor's books and papers. (1) An affidavit must be made by every person executing an assignment for the benefit of creditors, to be annexed to and filed with the inventory mentioned in the last section, to the effect that the same is in all respects just and true, according to the best of such assignor's knowledge and belief; but in case such assignor shall omit, neglect, or refuse to make and deliver such inventory within the twenty days required, the assignee named in such assignment shall, within thirty days after the date thereof, cause to be made and delivered to the judge of the district court of the county where such assignment is recorded such inventory as above required, in so far as he can; and for such purpose, said judge shall, at any time, upon the application of such assignee, compel by order such delinquent assignor, and any other person, to appear before him and disclose, upon oath, any

knowledge or information he may possess, necessary to the proper making of such inventory.

(2) The assignee shall verify the inventory so made by him to the effect that the same is in all respects just and true to the best of his knowledge and belief. But in case the said assignee shall be unable to make and file such inventory within said thirty days, the district judge may, upon application upon oath, showing such inability, allow him such further time as shall be necessary, not exceeding sixty days. If the assignee fail to make and file such inventory within said thirty days, or such further time as may be allowed, the district judge shall require, by order, the assignee forthwith to appear before him and show cause why he should not be removed. Any person interested in the trust estate may apply for such order and demand such removal. The books and papers of such delinquent assignor shall at all times be subject to the inspection and examination of any creditor. The district judge is authorized by order to require such debtor or assignee to allow such inspection or examination. Disobedience to such order is hereby declared to be a contempt, and obedience to such order may be enforced by attachment. The inventory shall be filed by said district judge in the office of the clerk of said county in which said assignment is recorded.

History: En. Sec. 4523, Civ. C. 1895;
re-en. Sec. 6149, Rev. C. 1907; re-en. Sec.
8625, R. C. M. 1921. Cal. Civ. C. Sec. 3462.

18-315. (8626) Recording assignment and filing inventory. An assignment for the benefit of creditors must be recorded, and the inventory required by section 18-313 filed with the county clerk of the county in which the assignor resided at the date of the assignment; or, if he did not then reside in this state, with the clerk of the county in which his principal place of business was then situated; or, if he had not then a residence or place of business in this state, with the clerk of the county in which the principal part of the assigned property was then situated.

History: En. Sec. 4524, Civ. C. 1895;
re-en. Sec. 6150, Rev. C. 1907; re-en. Sec.
8626, R. C. M. 1921. Cal. Civ. C. Sec. 3463.
Based on Field Civ. C. Sec. 1938.

References
Stanton Bk. v. Northern Mont. Assn.
etc., 77 M 153, 159, 250 P 596.

18-316. (8627) Same—more than one assignor recording assignment. If an assignment for the benefit of creditors is executed by more than one assignor, it must be recorded, and a copy of the inventory required by section 18-313 must be filed with the county clerk of the county in which any of the assignors resided at its date, or in which any of them, not then residing in this state, had then a place of business.

History: En. Sec. 4525, Civ. C. 1895; 8627, R. C. M. 1921. Cal. Civ. C. Sec. 3464.
re-en. Sec. 6151, Rev. C. 1907; re-en. Sec. Based on Field Civ. C. Sec. 1939.

18-317. (8628) Effect of omitting to record. An assignment for the benefit of creditors is void against creditors of the assignor, and against purchasers and encumbrancers in good faith and for value, unless it is recorded within twenty days after the date of the assignment.

History: En. Sec. 4526, Civ. C. 1895; 8628, R. C. M. 1921. Cal. Civ. C. Sec. 3465.
re-en. Sec. 6152, Rev. C. 1907; re-en. Sec. Based on Field Civ. C. Sec. 1940.

18-318. (8629) Assignment of real property. Where an assignment for the benefit of creditors embraces real property, it is subject to the provisions of sections 73-201 to 73-205, as well as to those of this chapter.

History: En. Sec. 4527, Civ. C. 1895; re-en. Sec. 6153, Rev. C. 1907; re-en. Sec. 8629, R. C. M. 1921. Cal. Civ. C. Sec. 3466. Field Civ. C. Sec. 1941.

Collateral References

Assignments for Benefit of Creditors 163-170.
6 C.J.S. Assignments for Benefit of Creditors § 118.

18-319. (8630) Bond of assignees. Within thirty days after the date of an assignment for the benefit of creditors, the assignee must enter into a bond to the state, for the use and benefit of the creditors, in such amount as may be fixed by a judge of the district court of the county in which the original inventory is filed, with sufficient sureties to be approved by such judge, and conditioned for the faithful discharge of the trust, and the due accounting for all moneys received by the assignee, which bond must be filed in the same office with the original inventory.

History: En. Sec. 4528, Civ. C. 1895; re-en. Sec. 6154, Rev. C. 1907; re-en. Sec. 8630, R. C. M. 1921. Cal. Civ. C. Sec. 3467. Based on Field Civ. C. Sec. 1942.

6 C.J.S. Assignments for Benefit of Creditors § 174.
4 Am. Jur. 415, 416, Assignments for Benefit of Creditors, §§ 148, 149.

References

State v. District Court, 74 M 34, 37, 237 P 523; Stanton Bk. v. Northern Mont. Assn. etc., 77 M 153, 159, 250 P 596.

What are official, as distinguished from individual, acts for which sureties or bond of assignee for creditors are liable. 50 ALR 314.

Collateral References

Assignments for Benefit of Creditors 205-208.

18-320. (8631) Conditions of disposal and conversion. Until the inventory and affidavit required by sections 18-313 and 18-314 have been made and filed, and the assignee has given bond as required by the last section, the assignee for the benefit of creditors has no authority to dispose of the estate or convert it to the purposes of the trust. But in case the assignor shall fail to present such inventory within the twenty days required, then the assignee, before the ten days shall have elapsed, may apply to said district judge by verified petition, for leave to file a provisional bond, until such time as he may be able to present the inventory as hereinbefore provided. The district judge shall, in the case provided in section 18-314, and may also at any time, on the petition of one or more creditors, showing misconduct or incompetency of the assignee, or on petition of the assignee himself, showing sufficient reason therefor, and after due notice of not less than five days to the assignor, assignee, surety, and such other persons as such judge may prescribe, remove or discharge the assignee, and appoint one or more in his place, and order an accounting of the assignee so removed or discharged, and may enjoin said assignee from interfering with the assignor's estate, and make provision by order for the safe custody of the same, and enforce obedience to such injunction and orders by attachment; and, upon his discharge, upon his own application, such assignee's bond shall be canceled and discharged. The new assignee shall give a bond, to be approved as required. The district judge shall have power, by order, to require or allow any inventory or schedule filed to be corrected or amended, and also to require and compel, from time to time, supplemental

inventories or schedules to be made and filed within such time as he shall prescribe, and to enforce obedience to such orders by attachment.

History: Ap. p. Sec. 4529, Civ. C. 1895; re-en. Sec. 6155, Rev. C. 1907; amd. Sec. 1, Ch. 180, L. 1919; amd. Sec. 1, Ch. 215, L. 1921. Cal. Civ. C. Sec. 3468.

References

Patrick & Co. v. McDonnell, 61 M 236, 241, 201 P 1009; Stanton Bk. v. Northern Mont. Assn. etc., 77 M 153, 160, 250 P 596.

Collateral References

Assignments for Benefit of Creditors 205-214, 220 et seq.

6 C.J.S. Assignments for Benefit of Creditors §§ 174-180 et seq.

4 Am. Jur. 426, Assignments for Benefit of Creditors, §§ 168 et seq.

18-321. (8632) Notice to creditors to present claims. The judge may, upon the petition of the assignee, authorize him to advertise for creditors to present to him their claims, with the vouchers therefor, duly verified, on or before a day to be specified in such advertisement, not less than ten days from the publication thereof, which advertisement or notice shall be published in one newspaper, to be designated by the judge, as most likely to give notice to the persons to be served, at least once and such additional times as the judge may direct; the last publication shall be at least one week prior to the date specified.

Said verified claims of creditors shall set forth whether any, and if so, what securities are held for such claims, and whether any, and if so, what payments have been made thereon.

History: En. Sec. 1, Ch. 180, L. 1919; amd. Sec. 1, Ch. 215, L. 1921; re-en. Sec. 8632, R. C. M. 1921.

Operation and Effect

The rule that where the time within which creditors must present their claims to an assignee is fixed by statute, the failure of a creditor to present his claim within that time bars him from his right to participate in dividends, is, in principle, applicable where, as in this state (this section), the district judge may fix the time for such presentation. State v. District Court, 74 M 34, 237 P 523.

References

Stanton Bk. v. Northern Mont. Assn. etc., 77 M 153, 159, 250 P 596.

Collateral References

Assignments for Benefit of Creditors 301-305.

6 C.J.S. Assignments for Benefit of Creditors §§ 311, 313, 314, 316.

Right of creditor to interest after bankruptcy, declared insolvency, or appointment of receiver, where assets are more than sufficient to pay the principal of all claims. 39 ALR 457 and 44 ALR 1170.

Time limitation as to filing of claims against insolvent as affected by excuses, and the nature of such excuses. 109 ALR 1404.

18-322. (8633) Notices to parties interested in the estate as creditors or otherwise. Parties interested in the estate as creditors, or parties otherwise interested, if the judge so directs, shall have at least ten days' notice by mail to their respective addresses as they appear in the schedule filed by the assignor, or at such other addresses as they shall have filed with the assignee of (a) all proposed sales of property, in bulk, (b) the filing of the final account of the assignee and of the hearing thereon, (c) any proposed compromise with creditors. Such notice may be given as the judge shall direct and must be returnable in court, or before the judge of the court, at chambers in the district.

History: En. Sec. 1, Ch. 180, L. 1919; amd. Sec. 1, Ch. 215, L. 1921; re-en. Sec. 8633, R. C. M. 1921.

References

Stanton Bk. v. Northern Mont. Assn. etc., 77 M 153, 159, 250 P 596.

Collateral References

Assignments for Benefit of Creditors \Rightarrow
242, 316, 375.

6 C.J.S. Assignments for Benefit of
Creditors §§ 200, 263, 349.

18-323. (8634) Duties of assignee. It shall be the duty of the assignee to collect and reduce to money the property of the estate, close up the estate as expeditiously as possible; to sell the property of the estate as soon as practicable, and to sell the accounts and bills receivable when deemed advisable; furnish such information concerning the estate as may be requested by parties in interest; keep regular accounts, pay dividends as often as is compatible with the best interests of the estate; file a final report and account at least ten days before the hearing thereon.

History: En. Sec. 1, Ch. 180, L. 1919;
amd. Sec. 1, Ch. 215, L. 1921; re-en. Sec.
8634, R. C. M. 1921.

References

Stanton Bk. v. Northern Mont. Assn.
etc., 77 M 153, 160, 250 P 596.

Collateral References

Assignments for Benefit of Creditors
 \Rightarrow 215 et seq.

6 C.J.S. Assignments for Benefit of
Creditors § 181.

4 Am. Jur. 408, Assignments for Benefit
of Creditors, §§ 136 et seq.

18-324. (8635) Power of court. The court shall have power:

1. To authorize the business of the assignor to be conducted for a limited period by assignee, if necessary in the best interests of the estate, and allow additional compensation for such services;

2. To reopen estates when it appears they were closed before being fully administered, and for that purpose to appoint another assignee who will take title to the property not administered upon;

3. To direct upon the final settlement of the estate that the assignee pay to the lawful creditors their proportionate dividend, notwithstanding their claim has not been presented in accordance with the notice sent out by the assignee; provided, that four months have not elapsed since the first publication of notice to creditors;

4. To approve the final report and to discharge the assignee and his surety, from all further liabilities upon matters included in the accounting, to creditors appearing and to creditors not having appeared after due citation, or not having presented their claims after due advertisement.

History: En. Sec. 1, Ch. 180, L. 1919;
amd. Sec. 1, Ch. 215, L. 1921; re-en. Sec.
8635, R. C. M. 1921.

Assignee—Responsibility to Court, Duties and Restrictions

The assignee acts as a fiduciary for the creditors under the control and direction of the district court, sections 18-301 to 18-330 restricting his activity; the court must be advised of the details of a sale of the assets of an insolvent business, and investigate the propriety thereof; held, in the instant case, that since the court was not advised of the existence of the unlisted property when it approved a sale, there was no approval and that therefore it properly ordered the matter reopened. In re Halvorson Mercantile Co., 112 M 563, 566, 118 P 2d 1047.

Operation and Effect

Held, on application for writ of supervisory control, that under this section, construed in conjunction with section 18-321, the district court has power upon final settlement of the estate to direct the assignee to pay a lawful creditor his proportionate dividend though his claim was not presented within the time designated in the assignee's call, provided four months have not elapsed since the first publication of notice to creditors, and that therefore, where a creditor did not present his claim until two years and two months after first publication of notice, the court exceeded its power in allowing the claim. State v. District Court, 74 M 34, 36, 237 P 523.

References

Stanton Bk. v. Northern Mont. Assn. etc., 77 M 153, 160, 250 P 596.

Collateral References

Assignments for Benefit of Creditors 221 et seq., 370 et seq.
6 C.J.S. Assignments for Benefit of Creditors §§ 185 et seq., 266.

18-325. (8636) Further security required. The district judge may, upon his own motion, or upon the application of any party in interest, and on such notice as he may direct to be given to the assignor, assignee, and surety, require further security to be given whenever, in his judgment, the security afforded by the bond on file is not adequate.

History: En. Sec. 4530, Civ. C. 1895; re-en. Sec. 6156, Rev. C. 1907; re-en. Sec. 8636, R. C. M. 1921.

References

Stanton Bk. v. Northern Mont. Assn. etc., 77 M 153, 160, 250 P 596.

18-326. (8637) Accounting of assignee. After six months from the date of an assignment for the benefit of creditors, the assignee may be required, on petition of any creditor, to account before the district court of the county where the accompanying inventory was filed in the manner prescribed by Title 93.

History: En. Sec. 4531, Civ. C. 1895; re-en. Sec. 6157, Rev. C. 1907; re-en. Sec. 8637, R. C. M. 1921. Cal. Civ. C. Sec. 3469. Based on Field Civ. C. Sec. 1944.

Collateral References

Assignments for Benefit of Creditors 373, 375.
6 C.J.S. Assignments for Benefit of Creditors §§ 263, 264.

References

Stanton Bk. v. Northern Mont. Assn. etc., 77 M 153, 159, 250 P 596.

18-327. (8638) Property exempt. Property exempt from execution, and insurance upon the life of the assignor, do not pass to the assignee by a general assignment for the benefit of creditors, unless the instrument specially mentions them, and declares an intention that they should pass thereby.

History: En. Sec. 4532, Civ. C. 1895; re-en. Sec. 6158, Rev. C. 1907; re-en. Sec. 8638, R. C. M. 1921. Cal. Civ. C. Sec. 3470. Field Civ. C. Sec. 1945.

Collateral References

Assignments for Benefit of Creditors 174-183.
6 C.J.S. Assignments for Benefit of Creditors § 135 et seq.

18-328. (8639) Compensation. In the absence of any provision in the assignment to the contrary, an assignee for the benefit of creditors is entitled to the same commissions as are allowed by law to executors and guardians; but the assignment cannot grant more, and may restrict the commissions to a less amount, or deny them altogether.

History: En. Sec. 4533, Civ. C. 1895; re-en. Sec. 6159, Rev. C. 1907; re-en. Sec. 8639, R. C. M. 1921. Cal. Civ. C. Sec. 3471. Field Civ. C. Sec. 1946.

Collateral References

Assignments for Benefit of Creditors 390-393.
6 C.J.S. Assignments for Benefit of Creditors §§ 289-293.

18-329. (8640) Assignees protected for acts done in good faith. An assignee for the benefit of creditors is not to be held liable for his acts, done in good faith, in the execution of the trust, merely for the reason that the assignment is afterwards adjudged void.

History: En. Sec. 4534, Civ. C. 1895; re-en. Sec. 6160, Rev. C. 1907; re-en. Sec.

8640, R. C. M. 1921. Cal. Civ. C. Sec. 3472. Field Civ. C. Sec. 1947.

Collateral References

Assignments for Benefit of Creditors 294, 356, 407.

6 C.J.S. Assignments for Benefit of Creditors §§ 299, 388, 398.

18-330. (8641) Assent of creditors necessary to modification of assignment. An assignment for the benefit of creditors, which has been executed and recorded so as to transfer the property to the assignee, cannot afterwards be canceled or modified by the parties thereto, without the consent of every creditor affected thereby.

History: En. Sec. 4535, Civ. C. 1895; re-en. Sec. 6161, Rev. C. 1907; re-en. Sec. 8641, R. C. M. 1921. Cal. Civ. C. Sec. 3473. Field Civ. C. Sec. 1948.

References

Cited or applied as section 4535, Civil Code, in *Babcock v. Maxwell*, 21 M 507, 513, 54 P 943.

Collateral References

Assignments for Benefit of Creditors 49.

6 C.J.S. Assignments for Benefit of Creditors § 121.

TITLE 19

DEFINITIONS AND GENERAL PROVISIONS

Chapter 1. Definitions and construction of terms—holidays—other general provisions, 19-101 to 19-121.

CHAPTER 1

DEFINITIONS AND CONSTRUCTION OF TERMS—HOLIDAYS—OTHER GENERAL PROVISIONS

Section	19-101.	Joint authority, construction of words giving.
	19-102.	Words and phrases, how construed.
	19-103.	Certain words defined.
	19-104.	"Heretofore" and "hereafter," meaning of.
	19-105.	Notice, actual and constructive.
	19-106.	Constructive notice.
	19-107.	Legal holidays and business days defined.
	19-108.	Provisions of school code excepted.
	19-109.	Certain acts may be done on day following holiday.
	19-110.	Seal defined.
	19-111.	Great seal.
	19-112.	Seals of executive officers.
	19-113.	State flag.
	19-114.	Design of state flag.
	19-115.	Bitter root state floral emblem.
	19-116.	Western meadow lark designated as official bird of state.
	19-117.	Official map of Montana.
	19-118.	Custody of plates for map—corrections.
	19-119.	Preamble—Charles M. Russell statue.
	19-120.	Commission—creation—purposes.
	19-121.	Montana fine arts' commission fund.

19-101. (14) Joint authority, construction of words giving. Words giving a joint authority to three or more public officers, or other persons, are construed as giving such authority to a majority of them, unless it is otherwise expressed in the act giving the authority.

History: En. Sec. 14, Pol. C. 1895; re-en. Sec. 14, Rev. C. 1907; re-en. Sec. 14, R. C. M. 1921. Cal. Pol. C. Sec. 15.

Operation and Effect

Held, that one of five statutory trustees in charge of the affairs of a dissolved corporation may not prosecute an appeal to the supreme court from an order appointing a receiver for the corporation

against the wishes of his cotrustees, irrespective of whether unit or majority rule of action controls under certain statutes. Union Bank etc. Co. v. Penwell et al., 99 M 255, 267, 42 P 2d 457.

Collateral References

Officers⇒108.
67 C.J.S. Officers § 109.

19-102. (15) Words and phrases, how construed. Words and phrases used in the codes or other statutes of Montana are construed according to the context and the approved usage of the language; but technical words and phrases, and such others as have acquired a peculiar and appropriate meaning in law, or are defined in the succeeding section, as amended, are to be construed according to such peculiar and appropriate meaning or definition.

History: En. Sec. 15, Pol. C. 1895; re-en. Sec. 15, Rev. C. 1907; amd. Sec. 3, Ch. 4, L. 1921; re-en. Sec. 15, R. C. M. 1921. Cal. Pol. C. Sec. 16.

Force of Ordinary Rules of Grammar

Since under this section, statutes must be interpreted according to the ordinary rules of grammar, and if, when thus regarded, the words embody a definite meaning involving no absurdity or contradiction, the court may not add to or take from their meaning, held, construing section 93-9715 that the words "of the damages thus assessed, and of the rent found due" obviously constitute two separate and coordinate prepositional phrases connected by the word "and," the antecedent of both phrases being the noun "amount," therefore, the amount which must be trebled in the judgment includes rent as well as damages, the court having no discretion in the matter. *Steinbrenner v. Love*, 113 M 466, 468, 129 P 2d 101.

Words in Common Use

"Facility" is not a technical word, but one in common use, and its meaning is to be found in the sense attached to it by approved usage; and moneys raised by a tax to furnish "additional school facilities" may be used to pay the salaries of teachers. *State ex rel. Knight v. Cave*, 20 M 468, 475, 52 P 200.

"Each party," *Mullery v. Great Northern Ry. Co.*, 50 M 408, 416, 148 P 323.

"Malt liquors," *State v. Centennial Brewing Co.*, 55 M 500, 517, 179 P 296.

"Manufacture," *State v. Hennessy Co.*, 71 M 301, 303, 230 P 64.

"Width," *State v. Board of County Commissioners*, 83 M 540, 551, 273 P 290.

References

State v. Redmond, 73 M 376, 380, 237 P 486; *McNair v. School District No. 1*, 87 M 423, 427, 288 P 188; *State ex rel. State Board of Education et al. v. Nagle et al.*, 100 M 86, 91, 45 P 2d 1041; *State ex rel. Freebourn v. Merchants' Credit Service, Inc.*, 104 M 76, 101, 66 P 2d 337; *Young v. Waldrop*, 111 M 359, 364, 109 P 2d 59; *Bergin v. Temple*, 111 M 539, 549, 111 P 2d 286; *State v. Jolly*, 112 M 352, 355, 116 P 2d 686; *General Finance Co. v. Powell et al.*, 112 M 535, 540, 118 P 2d 751; *State ex rel. Palagi v. Regan*, 113 M 343, 349, 126 P 2d 818; *State ex rel. Stafford v. Fox-Great Falls Theatre Corp.*, 114 M 52, 65, 132 P 2d 689; *Pampel v. State Board of Examiners*, 114 M 380, 386, 136 P 2d 991; *In re Irvine's Estate*, 114 M 577, 582, 139 P 2d 489; *Grady v. City of Livingston et al.*, 115 M 47, 55, 141 P 2d 346; *Shields v. Shields*, 115 M 146, 155, 139 P 2d 528; *Hardenburgh v. Hardenburgh*, 115 M 469, 487, 146 P 2d 151; *Hendy v. Industrial Accident Board*, 115 M 516, 519, 146 P 2d 324; *State ex rel. Montgomery Ward & Co. v. District Court*, 115 M 521, 525, 146 P 2d 1012; *State ex rel. Stefanick v. District Court*, 117 M 86, 97, 157 P 2d 296; *In re Transportation of School Children*, 117 M 618, 622, 161 P 2d 901; *McCarten v. Sanderson*, 111 M 407, 100 P 2d 1108, 1111; *State ex rel. Bonner v. District Court*, 123 M 609, 206 P 2d 166, 172.

Collateral References

Statutes 188, 191, 192.
82 C.J.S. *Statutes* §§ 329, 330.
50 Am. Jur. 204, *Statutes*, §§ 225 et seq.

19-103. (16) Certain words defined. The following words when used in the Revised Codes of Montana of 1947, or in any act amendatory of or supplemental to said codes, shall have the following meanings and interpretations unless otherwise apparent from the context. The present tense includes the future as well as the present; words used in the masculine gender include the feminine and neuter; the singular number includes the plural and the plural, the singular; the word person includes a corporation as well as a natural person; writing includes printing; oath includes affirmation or declaration, and every mode of oral statement under oath or affirmation is embraced in the term "testify," and every written one in the term "depose"; signature or subscription includes mark when the person cannot write, his name being written near it, and written by a person who writes his own name as a witness. The following words also have the signification attached to them in this section, unless otherwise apparent from the context.

1. The word "property" includes property real and personal.

2. The words "real property" are co-extensive with lands, tenements, hereditaments and possessory title to public lands.

3. The words "personal property" include money, goods, chattels, things in action and evidence of debt.

4. The word "year," means a calendar year, and a "month," a calendar month, unless otherwise expressed. Fractions of a year are to be computed by the number of months, thus, half a year is six (6) months. Fractions of a day are to be disregarded in computations which include more than one (1) day and involve no questions of priority.

5. The word "State," when applied to the different parts of the United States, includes the District of Columbia and the territories, and the words "United States" may include the district and territories.

6. The word "will" includes codicils.

7. The word "writ" signifies an order or precept in writing, issued in the name of the state, or of a court or judicial officer; and the word "process," a writ or summons issued in the course of judicial proceedings.

8. The word "vessel" when used in reference to shipping, includes ships of all kinds, steamboats and steamships, canal boats and every structure adapted to be navigated from place to place.

9. The term "peace officer" signifies any of the officers mentioned in section 94-4906.

10. The term "magistrate" signifies any one of the officers mentioned in section 94-4905.

11. The word "several" means two (2) or more.

12. The words "third persons" include all who are not parties to the obligation or transaction concerning which the phrase is used.

13. Usage, is a reasonable and lawful public custom concerning transactions of the same nature as those which are to be affected thereby, existing at the place where the obligation is to be performed, and either known to the parties or so well established, general and uniform, that they must be presumed to have acted with reference thereto.

14. The words "usual" and "customary" mean "according to usage."

15. The word "wilfully" when applied to the intent with which an act is done or omitted, implies simply a purpose or willingness to commit the act, or make the omission referred to. It does not require any intent to violate law, or to injure another, or to acquire any advantage.

16. The words "neglect," "negligence," "negligent," and "negligently" import a want of such attention to the nature or probable consequences of the act or omission as a prudent man ordinarily bestows in acting in his own concerns.

17. The word "corruptly" imports a wrongful design to acquire or cause some pecuniary or other advantage to the person guilty of the act or omission referred to, or to some other person.

18. The words "malice" and "maliciously" import a wish to vex, annoy, or injure another person, or an intent to do a wrongful act, established either by proof or presumption of law.

19. The word "knowingly" imports only a knowledge that the facts exist which bring the act or omission within the provisions of this code. It does not require any knowledge of the unlawfulness of such act or omission.

20. The word "bribe" signifies anything of value or advantage, present or prospective, or any promise or undertaking to give any, asked, given or

accepted, with a corrupt intent to influence, unlawfully, the person to whom it is given, in his action, vote, or opinion, in any public or official capacity.

21. When the seal of a court or public officer is required by law to be affixed to any paper the word "seal" includes an impression of such seal upon the paper alone, or upon any substance attached to the paper capable of receiving a visible impression. The seal of a private person may be made in like manner, or by the scroll of a pen, or by writing the word "seal" against his name.

History: En. Sec. 16, Pol. C. 1895; re-en. Sec. 16, Rev. C. 1907; amd. Sec. 4, Ch. 4, L. 1921; re-en. Sec. 16, R. C. M. 1921; amd. Sec. 1, Ch. 25, L. 1947. Cal. Pol. C. Sec. 17.

Malice

The institution of criminal proceeding for passing a fraudulent check, which was in fact good, in order to collect on the check, was a malicious act. *Rickman v. Safeway Stores, Inc.*, 124 M 451, 227 P 2d 607, 610.

Masculine, Feminine and Neuter Gender

Words used in the codes in the masculine gender include the feminine. Our statute therefore, declares that the phrase "Imputes to him impotence or want of chastity" would apply to the feminine as well as the masculine. *Kosonen v. Waara*, 87 M 24, 32, 285 P 668.

Person

Though the term "person" ordinarily refers to a living human being—a natural person—the definition given it by this and other sections of the codes includes corporations as well as natural persons. In *re Beek's Estate*, 44 M 561, 572, 121 P 784.

Real Property

The legislature has classed an unpatented quartz lode mining claim as real estate, and has provided the same remedies for the protection and enforcement of

rights pertaining to it, with the same forms of procedure as it has provided for the protection and enforcement of rights pertaining to other real estate. *State ex rel. Baker v. District Court*, 24 M 330, 333, 61 P 882.

Singular and Plural Numbers

The singular number when used in this code may include the plural, and the plural the singular; and a statute requiring the notice of a school election to contain "the time and place of holding the election" may designate different "places." *Hauswirth v. Mueller*, 25 M 156, 161, 64 P 324. See also *Mitchell v. Banking Corp. of Montana*, 81 M 459, 464, 264 P 127.

References

Helena Water Works Co. v. Settles, 37 M 237, 239, 95 P 838; *Williard et al. v. Federal Surety Co.*, 91 M 465, 471, 8 P 2d 796; *State ex rel. Tillman v. District Court*, 101 M 176, 182, 53 P 2d 107; *State ex rel. Clark v. District Court*, 103 M 145, 147, 61 P 2d 836; *State ex rel. Freebourn v. Merchants' Credit Service, Inc.*, 104 M 76, 101, 66 P 2d 337; *Welsh v. Roehm*, 125 M 517, 241 P 2d 816, 820; *Clark v. Clark*, 126 M 9, 242 P 2d 992, 993; In *re Hansen's Estate*, 126 M 522, 254 P 2d 1073, 1075; *Brown v. Grenz*, 127 M 49, 257 P 2d 246, 248.

Collateral References

Statutes—188, 198, 199.
82 C.J.S. Statutes §§ 329, 338, 340.

19-104. (8782) "Heretofore" and "hereafter," meaning of. Whenever the term "heretofore" occurs in any statute, it shall be construed to mean any time previous to the day such statute shall take effect; and whenever the word "hereafter" occurs, it shall be construed to mean the time after the statute containing the term shall take effect.

History: En. Sec. 4670, Civ. C. 1895; re-en. Sec. 6232, Rev. C. 1907; re-en. Sec. 8782, R. C. M. 1921.

Collateral References

Statutes—199, 234½, 261 et seq.
82 C.J.S. Statutes §§ 319, 338, 412.

19-105. (8780) Notice, actual and constructive. Notice is:

1. Actual—which consists in express information of a fact.
2. Constructive—which is imputed by law.

History: En. Sec. 4666, Civ. C. 1895; re-en. Sec. 6228, Rev. C. 1907; re-en. Sec. 8780, R. C. M. 1921. Cal. Civ. C. Sec. 18. Based on Field Civ. C. Secs. 2009, 2010.

Operation and Effect

Constructive notice, notice implied by law, is analogous to a summons and serves the same purpose. *Oliveri v. Maroncelli et al.*, 94 M 476, 479, 22 P 2d 1054.

References

Cited or applied as section 4666, Civil Code, in *Trerise v. Bottego*, 32 M 244, 249,

79 P 1057; *Hoppin v. Long*, 74 M 558, 573, 241 P 636; *Angus v. Mariner et al.*, 85 M 365, 374, 278 P 996; *Pierce v. Pierce*, 108 M 42, 47, 89 P 2d 269.

Collateral References

Notice⇒1-6.

66 C.J.S. Notice § 7.

19-106. (8781) Constructive notice. Every person who has actual notice of circumstances sufficient to put a prudent man upon inquiry as to a particular fact has constructive notice of the fact itself, in all cases in which, by prosecuting such inquiry, he might have learned such facts.

History: En. Sec. 4667, Civ. C. 1895; re-en. Sec. 6229, Rev. C. 1907; re-en. Sec. 8781, R. C. M. 1921. Cal. Civ. C. Sec. 19. Based on Field Civ. C. Sec. 2011.

Excavation of City Street

Where plumber obtained license from city for the excavation and installation of a service pipe from street to residence, the city had notice of such excavation at time of granting such permission, and further notice to city of existence of such excavation was unnecessary to charge city with liability for damage resulting from unguarded excavation. *Ledbetter v. Great Falls*, 123 M 270, 213 P 2d 246, 13 ALR 2d 903.

Knowledge by Agent of Facts Puts Principal on Inquiry

Where agent of insurance company issuing indemnity policy specifying plaintiff as sole tenant of a building in fact knew the premises to be occupied by more than one tenant, this was sufficient to impute notice to the company, under this section, that the premises were, not wholly in the care and custody of a single tenant. *Curtis v. Zurich General Accident & Liability Insurance Co.*, 108 M 275, 279, 89 P 2d 1038.

Where prospective mortgagees were informed by their agent that prospective mortgagor owed numerous debts, and that such mortgagor had acquired the branded cattle involved under contract, though the contract was unrecorded, mortgagees were required in exercise of ordinary prudence to make inquiry from some source other than mortgagor as to ownership of the cattle brand and of the cattle. *Merriion v. Humphreys*, 119 M 495, 176 P 2d 665, 669.

Notice of Later Agreements Not Affecting Title

Evidence relating to transactions occurring after the consummation of a contract of lease of oil land and with which plaintiff and his grantor had nothing to do was inadmissible under section 93-401-5, in an action to quiet title. Whatever notice plain-

tiff may have had of these later agreements was ineffectual to diminish or affect the title which he received. *Nadeau v. Texas Company*, 104 M 558, 568, 69 P 2d 586, 593.

Operation and Effect

This section embodies an old rule of chancery. *Trerise v. Bottego*, 32 M 244, 248, 79 P 1057; *Yale Oil Corp. v. Sedlacek et al.*, 99 M 411, 43 P 2d 887.

Evidence held insufficient to establish constructive notice in defendant city of an unrecorded grant of a portion of a water right made prior to its purchase of the entire right by defendant. *Custer Con. Mines Co. v. City of Helena*, 52 M 35, 42, 156 P 1090.

The record of a money judgment against Mrs. C. J. E. cannot be held to have imparted constructive notice to a purchaser of real property from Anna E., the record title holder, that the property was impressed with a lien of the judgment, unless the purchaser had actual knowledge that Mrs. C. J. E. and Anna E. were the same person. *Poulos v. Lyman Brothers Co.*, 63 M 561, 208 P 598.

Held in an action to foreclose a second mortgage on real property and to have it declared superior to a prior one, unrecorded at the time plaintiff placed his mortgage of record, that plaintiff having been advised by language in his mortgage to the effect that it was "subject to a first mortgage heretofore made" on the property, he had actual notice of the prior lien; that he was chargeable with notice of all material facts which an inquiry suggested by the recital would have disclosed, and that with such notice he proceeded at his peril, even though the former instrument was not yet acknowledged or could be considered imperfect when he placed his mortgage on record. *Angus v. Mariner et al.*, 85 M 365, 374, 278 P 996.

A bank, holding money as bailee or pledge-holder, which receives notice that one other than the bailor or pledgor is the true owner thereof but notwithstanding such notice delivers it to a person other than the claimant, may be held liable for

the amount thereof. *Maser v. Farmers'* etc. Bank of Winnett, 90 M 33, 39, 300 P 199.

Defendant, in an action to quiet title, who relied upon an assignment of a certificate of sale and subsequent sheriff's deed to real property sold on foreclosure, held to have had sufficient notice of the facts and circumstances which subsequently resulted in a judgment setting aside the mortgage as fraudulent, to put him upon inquiry before taking the assignment and to make applicable the rule that failure to make inquiry which, if pursued, would have led to actual knowledge, will deprive one of the character of a bona fide purchaser. *Teisinger v. Hardy*, 91 M 9, 21, 5 P 2d 219.

Unrecorded Contract Affecting Land

In action for reformation of deed, objection to introduction in evidence of con-

tract which was not recorded prior to purchase of land by defendant on ground that no evidence had been introduced to show lack of good faith or notice on part of defendant was properly overruled when such evidence was offered later. *Strack v. Federal Land Bank*, 124 M 19, 218 P 2d 1052, 1055.

References

Hastings et al. v. Wise et al., 89 M 325, 341, 297 P 482; *Pierce v. Pierce*, 108 M 42, 47, 89 P 2d 269; *Kenney v. Bridges*, 123 M 95, 208 P 2d 475, 478.

Collateral References

Notice \Rightarrow 5.
66 C.J.S. Notice § 6.

19-107. (10) Legal holidays and business days defined. The following are legal holidays in the state of Montana, to-wit: Every Sunday; the first day of January (New Year's Day); the twelfth day of February (Lincoln's Birthday); the twenty-second day of February (Washington's Birthday); the thirtieth day of May (Memorial Day); the fourth day of July (Independence Day); the first Monday of September (Labor Day); the twelfth day of October (Columbus Day); the eleventh day of November (Veterans' Day); the twenty-fifth day of December (Christmas Day); every day on which a general election is held throughout the state and every day appointed by the president of the United States or by the governor of this state for a public fast, thanksgiving or holiday. If any of the holidays herein enumerated (except Sunday) fall upon a Sunday, the Monday following is a holiday. All other days than those herein mentioned are to be deemed business days for all purposes, except as herein provided.

Whenever any bank in the state of Montana elects to remain closed and refrains from the transaction of business on Saturdays, pursuant to authority for permissive closing on Saturdays by virtue of the laws of the state, legal holidays for such bank during the year of such election are hereby limited to the following holidays, and no other holidays, viz.: Every Sunday; the first day of January (New Year's Day); the thirtieth day of May (Memorial Day); the fourth day of July (Independence Day); the first Monday of September (Labor Day); the twenty-fifth day of December (Christmas Day); and every day upon which a general election is held throughout the state of Montana, and every day appointed by the president of the United States of America or by the governor of the state of Montana for a public fast, thanksgiving or holiday; provided, however, that any bank practicing Saturday closing in compliance with law may remain closed and refrain from the transaction of business on Saturdays, notwithstanding that a Saturday may coincide with a legal holiday other than one of the holidays designated above for banks practicing Saturday closing in compliance with law.

History: Ap. p. Sec. 10, Pol. C. 1895; 1921; amd. Sec. 1, Ch. 209, L. 1955. Cal. re-en. Sec. 10, Rev. C. 1907; amd. Sec. 1, Pol. C. Secs. 10-11. Ch. 21, L. 1921; re-en. Sec. 10, R. C. M.

NOTE.—Columbus Day created by chapter 22, Laws of 1909; Lincoln's Birthday, chapter 11, Laws of 1909.

Cross-References

School holidays, sec. 75-2204.

Validity of transactions on holiday, sec. 5-1042.

Operation and Effect

As more than sixty holidays during the year are provided for by this section, an ordinance making it unlawful to keep open a pawn-shop, loan office, or second-

hand store after six o'clock p.m., except on days preceding a holiday, when they may be kept open till ten o'clock p.m., will, in the absence of clear proof to the contrary, be held reasonable. *City of Butte v. Paltrovich*, 30 M 18, 24, 75 P 521.

Collateral References

Holidays↔1.

40 C.J.S. Holidays § 2.

50 Am. Jur. 799 et seq., Sundays and Holidays.

19-108. (11) Provisions of school code excepted. Nothing herein contained shall be deemed to amend or change the provisions of section 1300 of chapter 76 of the laws of the thirteenth legislative assembly of Montana of 1913 (section 75-2204), said section being hereby expressly declared to define legal holidays for school purposes only.

History: En. Sec. 2, Ch. 21, L. 1921; re-en. Sec. 11, R. C. M. 1921.

Collateral References

Schools and School District↔162.

79 C.J.S. Schools and School District § 483.

19-109. (12) Certain acts may be done on day following holiday. Whenever any act of a secular nature, other than a work of necessity or mercy, is appointed by law or contract to be performed upon a particular day, which day falls upon a holiday, such act may be performed upon the next business day with the same effect as if it had been performed upon the day appointed.

History: En. Sec. 12, Pol. C. 1895; re-en. Sec. 12, Rev. C. 1907; re-en. Sec. 12, R. C. M. 1921. Cal. Pol. C. Sec. 13.

Operation and Effect

There is no prohibition against the performance of any public act on Sunday, as such. *State ex rel. Hay v. Alderson*, 49 M 387, 410, 142 P 210.

Id. Instead of embodying a prohibition, this section merely provides an extra day of grace. Any of the enumerated acts may be done lawfully on a holiday, but are in time if not done until the next business day.

Collateral References

Time↔10.

86 C.J.S. Time § 12.

19-110. (13) Seal defined. When the seal of a court, public officer, or person is required by law to be affixed to any paper, the word "seal" includes an impression of such seal upon the paper alone, as well as upon wax or a wafer affixed thereto.

History: En. Sec. 13, Pol. C. 1895; re-en. Sec. 13, Rev. C. 1907; re-en. Sec. 13, R. C. M. 1921. Cal. Pol. C. Sec. 14.

Collateral References

Seals↔3.

79 C.J.S. Seals § 3.

19-111. (526) Great seal. The great seal of the state is as follows: A central group representing a plow, a miner's pick and shovel; upon the right representation of the great falls of the Missouri river; upon the left mountain scenery, and underneath the words "Oro y Plata." The seal must be two and one-half inches in diameter, and surrounded by these words: "The Great Seal of the State of Montana."

History: En. Sec. 1, p. 42, L. 1893; re-en. Sec. 1130, Pol. C. 1895; re-en. Sec. 430, Rev. C. 1907; re-en. Sec. 526, R. C. M. 1921.

Collateral References

States↔23.

81 C.J.S. States § 28.

19-112. (527) Seals of executive officers. Each of the executive and state officers of the state must have a seal. Such seal must contain the same representations and motto as is found on the great seal, and must be two inches in diameter, surrounded by the words "State of Montana" (giving the title of the office, "Secretary of State," "State Treasurer," etc.). An impression of the seal of executive and state officers must be filed in the office of the secretary of state.

History: En. Sec. 1131, Pol. C. 1895; re-en. Sec. 431, Rev. C. 1907; re-en. Sec. 527, R. C. M. 1921.

Collateral References
States↔23.
81 C.J.S. States § 59.

19-113. (528) State flag. There is hereby established a "State Flag of Montana."

History: En. Sec. 1, Ch. 42, L. 1905; re-en. Sec. 432, Rev. C. 1907; re-en. Sec. 528, R. C. M. 1921.

Collateral References
States↔23.
36 C.J.S. Flags § 2.

19-114. (529) Design of state flag. The "State Flag of Montana" shall be a flag having a blue field, with a representation of the great seal of the state in the center, and with golden fringe along the upper and lower borders of the flag; the same being the flag borne by the First Montana Infantry, U. S. V., in the Spanish-American war, with the exception of the device, "1st Montana Infantry, U. S. V."

History: En. Sec. 2, Ch. 42, L. 1905; re-en. Sec. 433, Rev. C. 1907; re-en. Sec. 529, R. C. M. 1921.

Collateral References
States↔23.
36 C.J.S. Flags § 2.

19-115. (530) Bitter root state floral emblem. The flower known as lewisia rediviva (bitter root) shall be the floral emblem of the state of Montana.

History: En. Sec. 3282, Pol. C. 1895; re-en. Sec. 2097, Rev. C. 1907; re-en. Sec. 530, R. C. M. 1921.

19-116. (530.1) Western meadow lark designated as official bird of state. The bird known as the Western Meadow Lark, *Sturnella-Neglecta* (Audubon), as preferred by a referendum vote of Montana school children, shall be designated and declared to be the official bird of the state of Montana.

History: En. Sec. 1, Ch. 149, L. 1931.

19-117. (530.2) Official map of Montana. The map of the state of Montana issued by the board of railroad commissioners of Montana shall be and the same hereby is designated as the official map of the state of Montana.

History: En. Sec. 1, Ch. 9, L. 1927.

Judicial Notice

The courts of this state will take judicial notice of the territorial limits of the

political subdivisions of the state as such limits are shown and depicted on the official map. *State v. Williams*, 122 M 279, 202 P 2d 245, 246.

19-118. (530.3) Custody of plates for map—corrections. The engraved stone plate from which the editions of said map are from time to time made, and in which the state of Montana now has an investment of more than eight thousand (\$8,000.00) dollars shall be and remain in the custody of said board of railroad commissioners, and shall be corrected from edition to

edition by said board by the inclusion thereon of all proper current map data in accordance with the basic plan of such map.

History: En. Sec. 2, Ch. 9, L. 1927.

19-119. Preamble—Charles M. Russell statue.—Whereas, under and by virtue of House Joint Memorial No. 3, session laws of the twenty-first legislative assembly of the state of Montana, 1929, the late Charles Marion Russell has been designated and named as a distinguished and illustrious citizen of the state of Montana; and

Whereas, under and by virtue of said House Joint Memorial No. 3, a place for a statue of the late Charles Marion Russell, in the National Statuary Hall, in the National Capitol Building, Washington, D. C. has been requested of the Honorable Senate and House of Representatives of the United States of America; Now, Therefore,

History: En. Preamble, Ch. 75, L. 1947.

19-120. Commission—creation—purposes. The governor of the state of Montana ex-officio, the secretary of the historical society of Montana, ex-officio, and one other member to be appointed by the governor of the state of Montana for a term of six (6) years, shall constitute the Montana fine arts' commission.

The purposes and the duties of the commission shall be as follows:

(a) As soon as funds are available therefor to:

1. Secure and design a statue of the late Charles Marion Russell.
2. Attend to the construction of such statue in accordance with the laws, rules and regulations of the United States of America pertaining to such matters.

3. Furnish such statue, when complete, to the suitable representative of the United States of America, to be placed in the National Statuary Hall in the National Capitol Building in Washington, D. C.

4. Attend to the certification by the state of Montana of the designation of the late Charles Marion Russell as entitled to the honor hereby and by section 19-119 conferred.

5. Generally foster and encourage, in honor of Charles Marion Russell, the fine arts in Montana and among other things, to receive for and on behalf of the state of Montana by donation and by purchase, art objects, to provide exhibitions and cause the same to be circulated in Montana.

6. Solicit and receive donations and works of art to accomplish the purposes hereof.

History: En. Sec. 1, Ch. 75, L. 1947;
amd. Sec. 1, Ch. 96, L. 1955.

19-121. Montana fine arts' commission fund. The funds previously collected for the above purposes and now held by the state treasurer are hereby transferred to a fund to be known as the Montana fine arts' commission fund and there held by the state treasurer as a special fund, not part of the general fund, and to consist only of private donations now and hereafter collected. Such funds may be expended only for the purposes enumerated in such paragraphs 1 to 6 inclusive in section 19-120 as amended herein, by the commission on approval of the state board of examiners.

History: En. Sec. 2, Ch. 75, L. 1947;
amd. Sec. 2, Ch. 96, L. 1955.

TITLE 20

DEPOSIT

- Chapter 1. Nature and class of deposit—obligations of depositary, 20-101 to 20-112.
2. Deposit for keeping—gratuitous deposit, 20-201 to 20-212.
 3. Deposit for keeping—storage—unclaimed property, 20-301 to 20-313.
 4. Deposit for keeping—finding—lost property, 20-401 to 20-416.
 5. Deposit for exchange, 20-501.

CHAPTER 1

NATURE AND CLASS OF DEPOSIT—OBLIGATIONS OF DEPOSITARY

- Section 20-101. Deposit—kinds of.
- 20-102. Voluntary deposit—how made.
- 20-103. Involuntary deposit—how made.
- 20-104. Same—duty of involuntary depositary.
- 20-105. Deposit for safekeeping defined.
- 20-106. Deposit for exchange defined.
- 20-107. Depositary must deliver on demand.
- 20-108. No obligation to deliver without demand.
- 20-109. Place of delivery.
- 20-110. Notice to owner of adverse claim.
- 20-111. Notice to owner of thing wrongfully detained.
- 20-112. Delivery of thing owned jointly, etc.

20-101. (7636) Deposit—kinds of. A deposit may be voluntary or involuntary; and for safekeeping or for exchange.

History: En. Sec. 2440, Civ. C. 1895; re-en. Sec. 5133, Rev. C. 1907; re-en. Sec. 7636, R. C. M. 1921. Cal. Civ. C. Sec. 1813. Field Civ. C. Sec. 907.

Cross-Reference

Seller of personal property as depositary for hire until delivery, sec. 74-301.

Collateral References

Bailments—1, 2; Depositaries—1, 3 and other particular topics.

8 C.J.S. Bailments §§ 1, 7; 26 C.J.S. Depositaries § 2.

6 Am. Jur. 127, Bailments.

20-102. (7637) Voluntary deposit—how made. A voluntary deposit is made by one giving to another, with his consent, the possession of personal property to keep for the benefit of the former, or of a third party. The person giving is called the depositor, and the person receiving the depositary.

History: En. Sec. 2441, Civ. C. 1895; re-en. Sec. 5134, Rev. C. 1907; re-en. Sec. 7637, R. C. M. 1921. Cal. Civ. C. Sec. 1814. Field Civ. C. Sec. 908.

Collateral References

Liability for loss of hat, coat, or other property deposited by customers in place of business. 1 ALR 2d 802.

20-103. (7638) Involuntary deposit—how made. An involuntary deposit is made:

1. By the accidental leaving or placing of personal property in the possession of any person, without negligence on the part of the owner; or,
2. In cases of fire, shipwreck, inundation, insurrection, riot, or like extraordinary emergencies, by the owner of personal property committing it, out of necessity, to the care of any person.

History: En. Sec. 2442, Civ. C. 1895; re-en. Sec. 5135, Rev. C. 1907; re-en. Sec. 7638, R. C. M. 1921. Cal. Civ. C. Sec. 1815. Field Civ. C. Sec. 909.

Collateral References

34 Am. Jur. 631, Lost Property.

20-104. (7639) Same—duty of involuntary depositary. The person with whom a thing is deposited in the manner described in the last section is bound to take charge of it, if able to do so.

History: En. Sec. 2443, Civ. C. 1895; re-en. Sec. 5136, Rev. C. 1907; re-en. Sec. 7639, R. C. M. 1921. Cal. Civ. C. Sec. 1816. Field Civ. C. Sec. 910.

Collateral References

Bailments⊖5; Depositaries⊖4.
8 C.J.S. Bailments § 15; 26 C.J.S. Depositaries § 5.

20-105. (7640) Deposit for safekeeping defined. A deposit for keeping is one in which the depositary is bound to return the identical thing deposited.

History: En. Sec. 2444, Civ. C. 1895; re-en. Sec. 5137, Rev. C. 1907; re-en. Sec. 7640, R. C. M. 1921. Cal. Civ. C. Sec. 1817. Field Civ. C. Sec. 911.

Collateral References

Bailments⊖2, 23; Depositaries⊖3, 4 and other particular topics.
8 C.J.S. Bailments §§ 7, 37; 26 C.J.S. Depositaries § 2, 5.

20-106. (7641) Deposit for exchange defined. A deposit for exchange is one in which the depositary is only bound to return a thing corresponding in kind to that which is deposited.

History: En. Sec. 2445, Civ. C. 1895; re-en. Sec. 5138, Rev. C. 1907; re-en. Sec. 7641, R. C. M. 1921. Cal. Civ. C. Sec. 1818. Field Civ. C. Sec. 912.

Operation and Effect

By accepting a deposit made for the purpose of exchange, a bank becomes the debtor of the depositor. *Stadler v. First National Bank*, 22 M 190, 215, 56 P 111; *Murphy v. Nett*, 51 M 82, 87, 149 P 713; *In re Williams' Estate*, 55 M 63, 70, 173 P 790.

Where a party let defendant have a check under an agreement that he would

use the proceeds in his own business for cashing miners' pay checks and repay the amount on a certain day, defendant was not guilty of larceny as bailee where he used it for other purposes and did not repay it, as the transaction was a loan for exchange and the title passed to defendant. *State v. Karri*, 51 M 157, 162, 149 P 956.

References

Cited or applied as section 5138, Revised Codes, in *Murphy v. Nett*, 51 M 82, 87, 149 P 713.

20-107. (7642) Depositary must deliver on demand. A depositary must deliver the thing to the person for whose benefit it was deposited, on demand, whether the deposit was made for a specified time or not, unless he has a lien upon the thing deposited, or has been forbidden or prevented from doing so by the real owner thereof, or by the act of the law, and has given the notice required by section 20-110.

History: En. Sec. 2450, Civ. C. 1895; re-en. Sec. 5139, Rev. C. 1907; re-en. Sec. 7642, R. C. M. 1921. Cal. Civ. C. Sec. 1822. Field Civ. C. Sec. 913.

Operation and Effect

In the absence of a special contract with reference to the bailment, a bailee

is not liable so long as he uses ordinary care; but it is incumbent upon him, in an action for failure to redeliver two horses as agreed, to show that he did use that degree of care for the preservation of the property. *Shropshire v. Sidebottom*, 30 M 406, 408, 78 P 941.

20-108. (7643) No obligation to deliver without demand. A depositary is not bound to deliver a thing deposited without demand, even where the deposit is made for a specified time.

History: En. Sec. 2451, Civ. C. 1895; re-en. Sec. 5140, Rev. C. 1907; re-en. Sec.

7643, R. C. M. 1921. Cal. Civ. C. Sec. 1823. Field Civ. C. Sec. 914.

Operation and Effect

By a deposit, other than special, in a bank, the money becomes the property of the bank, the relation of debtor and creditor is created, and a contract is implied that an equivalent sum shall be paid to the depositor upon demand therefor. *Stadler v. First National Bank*, 22 M 190, 215, 56 P 111. See *Cassidy v. Slemmons & Booth*, 41 M 426, 428, 109 P 976.

The general rule that where money is to become due only after demand, it is necessary for plaintiff to allege, and prove, that this requirement had been met, does not apply where defendant denies all liability. Under such circumstances a demand would be useless, and hence is not required by law. *Judith Inland Transp. Co. v. Williams*, 36 M 25, 28, 91 P 1061; *Cassidy v. Slemmons & Booth*, 41 M 426, 430, 109 P 976.

A cause of action does not arise in favor of a depositor until demand and refusal, unless the depositary has waived demand. *Stadler v. First Nat. Bank*, 22 M 190, 216, 56 P 111; *Cassidy v. Slemmons & Booth*, 41 M 426, 428, 109 P 976.

This section refers only to the obligation resting upon the depositary to deliver; it cannot be applied in resisting the payment of interest on moneys deposited to indemnify sureties on a bond against loss. *Leggat v. Palmer*, 39 M 302, 308, 102 P 327.

In a cause of action counting on a certificate of deposit, a demand, if necessary, must be alleged in the complaint. *Cassidy v. Slemmons & Booth*, 41 M 426, 429, 109 P 976.

20-109. (7644) Place of delivery. A depositary must deliver the thing deposited at his residence or place of business, as may be most convenient for him.

History: En. Sec. 2452, Civ. C. 1895; re-en. Sec. 5141, Rev. C. 1907; re-en. Sec. 7644, R. C. M. 1921. Cal. Civ. C. Sec. 1824. Field Civ. C. Sec. 915.

20-110. (7645) Notice to owner of adverse claim. A depositary must give prompt notice to the person for whose benefit the deposit was made, of any proceedings taken adversely to his interest in the thing deposited, which may tend to excuse the depositary from delivering the thing to him.

History: En. Sec. 2453, Civ. C. 1895; re-en. Sec. 5142, Rev. C. 1907; re-en. Sec. 7645, R. C. M. 1921. Cal. Civ. C. Sec. 1825. Field Civ. C. Sec. 916.

Operation and Effect

Where a special administratrix had a deposit as such in a bank, and another claiming to have been appointed special administrator, made demand on the bank for the payment of the deposit, and the

bank notified the depositor of the demand and was requested to refuse the demand and retain the deposit in the depositor's name, and thereupon the demandant sued the bank, and, after the removal by the depositor, demandant recovered judgment against the bank for the deposit and interest from the date of the demand, the depositor was not liable to the bank for the interest. *Murphy v. Nett*, 51 M 82, 88, 149 P 713.

20-111. (7646) Notice to owner of thing wrongfully detained. A depositary, who believes that a thing deposited with him is wrongfully detained from its true owner, may give him notice of the deposit; and if within a reasonable time afterwards he does not claim it, and sufficiently establish his right thereto, and indemnify the depositary against the claim of the depositor, the depositary is exonerated from liability to the person to whom he gave the notice, upon returning the thing to the depositor, or assuming, in good faith, a new obligation changing his position in respect to the thing, to his prejudice.

History: En. Sec. 2454, Civ. C. 1895; re-en. Sec. 5143, Rev. C. 1907; re-en. Sec. 7646, R. C. M. 1921. Cal. Civ. C. Sec. 1826. Field Civ. C. Sec. 917.

References

Maser v. Farmers' etc. Bank of Winnett, 90 M 33, 40, 300 P 199.

Collateral References

Bailment⇒21; Depositaries⇒4 and other particular topics.

8 C.J.S. Bailment § 40; 26 C.J.S. Depositaries § 5.

20-112. (7647) Delivery of thing owned jointly, etc. If a thing deposited is owned jointly or in common by persons who cannot agree upon the manner of its delivery, the depositary may deliver to each his proper share thereof, if it can be done without injury to the thing.

History: En. Sec. 2455, Civ. C. 1895; 7647, R. C. M. 1921. Cal. Civ. C. Sec. re-en. Sec. 5144, Rev. C. 1907; re-en. Sec. 1827. Field Civ. C. Sec. 918.

CHAPTER 2

DEPOSIT FOR KEEPING—GRATUITOUS DEPOSIT

- Section 20-201. Depositor must indemnify depositary.
 20-202. Obligation of depositary of animals.
 20-203. Obligations as to use of thing deposited.
 20-204. Liability for damage arising from wrongful use.
 20-205. Sale of thing in danger of perishing.
 20-206. Injury to or loss of thing deposited.
 20-207. Service rendered by depositary.
 20-208. Extent of his liability for negligence.
 20-209. Gratuitous deposit defined.
 20-210. Nature of involuntary deposit.
 20-211. Degree of care required of gratuitous depositary.
 20-212. His duties cease, when.

20-201. (7648) Depositor must indemnify depositary. A depositor must indemnify the depositary:

1. For all damage caused to him by the defects or vices of the thing deposited; and,
2. For all expenses necessarily incurred by him about the thing, other than such as are involved in the nature of the undertaking.

History: En. Sec. 2460, Civ. C. 1895; 8 C.J.S. Bailment § 34; 26 C.J.S. Depositories § 5.
 re-en. Sec. 5145, Rev. C. 1907; re-en. Sec. 7648, R. C. M. 1921. Cal. Civ. C. Sec. 1833.
 Field Civ. C. Sec. 919. Tort liability of bailee for theft by servant. 15 ALR 2d 829.

Collateral References

Bailment⌚19; Depositories⌚4.

20-202. (7649) Obligation of depositary of animals. A depositary of living animals must provide them with suitable food and shelter, and treat them kindly.

History: En. Sec. 2461, Civ. C. 1895;
 re-en. Sec. 5146, Rev. C. 1907; re-en. Sec. 7649, R. C. M. 1921. Cal. Civ. C. Sec. 1834.
 Field Civ. C. Sec. 920.

Collateral References

Animals⌚22 et seq.; Depositories⌚4.
 3 C.J.S. Animals § 17; 26 C.J.S. Depositories § 5.
 2 Am. Jur. 706, Animals, § 19.

References

Cited or applied as section 5146, Revised Codes, in *Kirk v. Smith*, 48 M 489, 494, 138 P 1088.

20-203. (7650) Obligations as to use of thing deposited. A depositary may not use the thing deposited, or permit it to be used, for any purpose, without the consent of the depositor. He may not, if it is purposely fastened by the depositor, open it without the consent of the latter, except in case of necessity.

History: En. Sec. 2462, Civ. C. 1895; 7650, R. C. M. 1921. Cal. Civ. C. Sec. 1835.
 re-en. Sec. 5147, Rev. C. 1907; re-en. Sec. Field Civ. C. Sec. 921.

Collateral References

Bailment⊃11-14; Depositaries⊃4.

8 C.J.S. Bailment § 26; 26 C.J.S. Depositaries § 5.

6 Am. Jur. 291, Bailments, §§ 200-207.

20-204. (7651) Liability for damage arising from wrongful use. A depositary is liable for any damage happening to the thing deposited, during his wrongful use thereof, unless such damage must inevitably have happened though the property had not been used.

History: En. Sec. 2463, Civ. C. 1895; 7651, R. C. M. 1921. Cal. Civ. C. Sec. 1836. re-en. Sec. 5148, Rev. C. 1907; re-en. Sec. Field Civ. C. Sec. 922.

20-205. (7652) Sale of thing in danger of perishing. If a thing deposited is in actual danger of perishing before instructions can be obtained from the depositor, the depositary may sell it for the best price obtainable, and retain the proceeds as a deposit, giving immediate notice of his proceedings to the depositor.

History: En. Sec. 2464, Civ. C. 1895; 7652, R. C. M. 1921. Cal. Civ. C. Sec. 1837. re-en. Sec. 5149, Rev. C. 1907; re-en. Sec. Field Civ. C. Sec. 923.

20-206. (7653) Injury to or loss of thing deposited. If a thing is lost during its deposit, and the depositary refuses to inform the depositor of the circumstances under which the loss or injury occurred, so far as he has information concerning them, or wilfully misrepresents the circumstances to him, the depositary is presumed to have wilfully, or by gross negligence, permitted the loss or injury to occur.

History: En. Sec. 2465, Civ. C. 1895; re-en. Sec. 5150, Rev. C. 1907; re-en. Sec. 7653, R. C. M. 1921. Cal. Civ. C. Sec. 1838. Based on Field Civ. C. Sec. 924.

Collateral References

Bailment⊃31(1).

8 C.J.S. Bailments § 50.

Tort liability of bailee for theft by servant. 15 ALR 2d 829.

20-207. (7654) Service rendered by depositary. So far as any service is rendered by a depositary, or required from him, his duties and liabilities are prescribed by the chapter on employment and service.

History: En. Sec. 2466, Civ. C. 1895; re-en. Sec. 5151, Rev. C. 1907; re-en. Sec. 7654, R. C. M. 1921. Cal. Civ. C. Sec. 1839. Field Civ. C. Sec. 925.

Collateral References

Bailment⊃15; Depositaries⊃4.

8 C.J.S. Bailments § 30; 26 C.J.S. Depositaries § 5.

20-208. (7655) Extent of his liability for negligence. The liability of a depositary for negligence cannot exceed the amount which he is informed by the depositor, or has reason to suppose, the thing deposited to be worth.

History: En. Sec. 2467, Civ. C. 1895; re-en. Sec. 5152, Rev. C. 1907; re-en. Sec. 7655, R. C. M. 1921. Cal. Civ. C. Sec. 1840. Based on Field Civ. C. Sec. 926.

8 C.J.S. Bailments § 55; 26 C.J.S. Depositaries §§ 6, 13.

6 Am. Jur. 324, Bailments, §§ 240 et seq.

Collateral References

Bailment⊃32; Depositaries⊃11 and other particular topics.

20-209. (7656) Gratuitous deposit defined. Gratuitous deposit is a deposit for which the depositary receives no consideration beyond the mere possession of the thing deposited.

History: En. Sec. 2480, Civ. C. 1895; re-en. Sec. 5153, Rev. C. 1907; re-en. Sec. 7656, R. C. M. 1921. Cal. Civ. C. Sec. 1844. Field Civ. C. Sec. 927.

Bank Holding Securities for Safekeeping Without Compensation a Gratuitous Bailee

Where bank accepted Liberty bonds for safekeeping but made no charge therefor,

contention that bank was not a gratuitous bailee because, by rendering such service, it would induce customers to deal with the bank in other matters for its profit, held improper in absence of evidence that the bank had sought or advertised for such deposits of valuable papers, and the bank was a gratuitous bailee. *Boyd v. Harrison State Bank*, 102 M 94, 105, 56 P 2d 724.

Operation and Effect

The defendant's position with respect to the property was that of a gratuitous bailee and therefore a demand made upon him for the return of the property, and a

refusal by him were prerequisites to the accrual of the plaintiff's right of action. *Gates v. Powell*, 77 M 554, 560, 252 P 377.

References

Cited or applied as section 5153, Revised Codes, in *Duckett v. Biggs*, 57 M 443, 188 P 938.

Collateral References

Bailment—2; Depositaries—1, 3 and other particular topics.

8 C.J.S. Bailments § 7; 26 C.J.S. Depositaries § 2.

20-210. (7657) Nature of involuntary deposit. An involuntary deposit is gratuitous, the depositary being entitled to no reward.

History: En. Sec. 2481, Civ. C. 1895; re-en. Sec. 5154, Rev. C. 1907; re-en. Sec. 7657, R. C. M. 1921. Cal. Civ. C. Sec. 1845. Field Civ. C. Sec. 928.

References

Cited or applied as section 5154, Revised Codes, in *Kirk v. Smith*, 48 M 489, 494, 138 P 1088.

Collateral References

Bailment—2, 19; Depositaries—3.

8 C.J.S. Bailments §§ 7, 34; 26 C.J.S. Depositaries § 2.

20-211. (7658) Degree of care required of gratuitous depositary. A gratuitous depositary must use at least slight care for the preservation of the thing deposited.

History: En. Sec. 2482, Civ. C. 1895; re-en. Sec. 5155, Rev. C. 1907; re-en. Sec. 7658, R. C. M. 1921. Cal. Civ. C. Sec. 1846. Field Civ. C. Sec. 929.

Degree of Care Required

Where Liberty bonds lost in bank robbery, after bank advised that robbery was scheduled, and failed to take precaution of safety devices with which equipped, held, rule of "slight care" provided by this section not met by proof that bank exercised same degree of care of bailor's prop-

erty as it did its own of like kind and value. Failure to use care situation demands, is gross negligence. *Boyd v. Harrison State Bank*, 102 M 94, 105, 56 P 2d 724.

Collateral References

Bailment—12; Depositaries—4 and other particular topics.

8 C.J.S. Bailments § 28; 26 C.J.S. Depositaries § 5.

6 Am. Jur. 339, Bailments, §§ 252 et seq.

20-212. (7659) His duties cease, when. The duties of a gratuitous depositary cease:

1. Upon his restoring the thing deposited to its owner; or,

2. Upon his giving reasonable notice to the owner to remove it, and the owner failing to do so within a reasonable time. But an involuntary depositary, under subdivision 2 of section 20-103, cannot give such notice until the emergency which gave rise to the deposit is past.

History: En. Sec. 2483, Civ. C. 1895; re-en. Sec. 5156, Rev. C. 1907; re-en. Sec. 7659, R. C. M. 1921. Cal. Civ. C. Sec. 1847. Field Civ. C. Sec. 930.

CHAPTER 3

DEPOSIT FOR KEEPING—STORAGE—UNCLAIMED PROPERTY

Section 20-301. Deposit for hire.

20-302. Degree of care required of depositary for hire.

20-303. Rate of compensation for fraction of a week, etc.

- 20-304. Termination of deposit.
- 20-305. Same—on payment of charges to become due.
- 20-306. Sale to pay costs of storage.
- 20-307. Application of proceeds of sale.
- 20-308. Storage of unclaimed property.
- 20-309. Property unclaimed within ninety days to be sold, how.
- 20-310. Proceeds unclaimed, where to go.
- 20-311. Carrier's responsibility ceases, when.
- 20-312. Property upon which advances are due may be sold, when.
- 20-313. Fees of officers.

20-301. (7660) Deposit for hire. A deposit not gratuitous is called storage. The depositary in such case is called a depositary for hire.

History: En. Sec. 2490, Civ. C. 1895; re-en. Sec. 5157, Rev. C. 1907; re-en. Sec. 7660, R. C. M. 1921. Cal. Civ. C. Sec. 1851. Field Civ. C. Sec. 931.

Collateral References

Bailment⌚2; Depositaries⌚1, 3.
8 C.J.S. Bailments § 7; 26 C.J.S. Depositaries § 2.

6 Am. Jur. 127, Bailments.

Liability for loss of hat, coat, or other property deposited by customers in place of business. 1 ALR 2d 802.

Tort liability of bailee for theft by servant. 15 ALR 2d 829.

20-302. (7661) Degree of care required of depositary for hire. A depositary for hire must use at least ordinary care for the preservation of the thing deposited.

History: En. Sec. 2491, Civ. C. 1895; re-en. Sec. 5158, Rev. C. 1907; re-en. Sec. 7661, R. C. M. 1921. Cal. Civ. C. Sec. 1852. Field Civ. C. Sec. 932.

Operation and Effect

There is not necessarily any conflict between this section and section 20-107. The rule that a bailee for hire is charged only with ordinary care has not been changed. *Shropshire v. Sidebottom*, 30 M 406, 408, 76 P 941.

Under this section, a bailee for hire must use at least ordinary care for the

preservation of the thing stored; if the article placed in storage is in good condition and returned in a damaged one, the presumption is that the bailee was negligent, and the burden is placed upon him to prove that he used due care. *Montana Leather Co. v. Colwell*, 96 M 274, 276, 30 P 2d 473.

Collateral References

Bailment⌚14; Depositaries⌚4.
8 C.J.S. Bailments § 27; 26 C.J.S. Depositaries § 5.
6 Am. Jur. 324, Bailments, §§ 240 et seq.

20-303. (7662) Rate of compensation for fraction of a week, etc. In the absence of a different agreement or usage, a depositary for hire is entitled to one week's hire for the sustenance and shelter of living animals during any fraction of a week, and to half a month's hire for the storage of any other property during any fraction of a half month.

History: En. Sec. 2492, Civ. C. 1895; re-en. Sec. 5159, Rev. C. 1907; re-en. Sec. 7662, R. C. M. 1921. Cal. Civ. C. Sec. 1853. Field Civ. C. Sec. 933.

References

Cited or applied as section 5159, Revised Codes, in *Kirk v. Smith*, 48 M 489, 494, 138 P 1088.

20-304. (7663) Termination of deposit. In the absence of an agreement as to the length of time during which a deposit is to continue, it may be terminated by the depositor at any time, and by the depositary upon a reasonable notice.

History: En. Sec. 2493, Civ. C. 1895; re-en. Sec. 5160, Rev. C. 1907; re-en. Sec. 7663, R. C. M. 1921. Cal. Civ. C. Sec. 1854. Field Civ. C. Sec. 934.

20-305. (7664) Same—on payment of charges to become due. Notwithstanding an agreement respecting the length of time during which a deposit is to continue, it may be terminated by the depositor on paying all

that would become due to the depositary in case of the deposit so continuing.

History: En. Sec. 2494, Civ. C. 1895; 7664, R. C. M. 1921. Cal. Civ. C. Sec. 1855. re-en. Sec. 5161, Rev. C. 1907; re-en. Sec. Field Civ. C. Sec. 935.

20-306. (7665) Sale to pay costs of storage. Any storage or commission merchant receiving personal property from any person for storage, and any common carrier of goods by whom any personal property is lawfully stored before or after the transportation thereof, may, after keeping the same in store for ninety days, in default of the payment of the storage or freight money on such personal property, advertise and sell the same at public auction to the highest bidder for cash, first giving notice of the time, the terms, and place of sale, and a description of the property to be sold, by publication in some newspaper published in the county where the property may be stored. Said notice shall be published at least once a week for four weeks next previous to the day of sale, and shall specify the amount due on the property to be sold. When a specified time has been agreed upon between the parties for the storage of said property, the same shall not be advertised until the expiration of the time agreed upon. Should there be no newspaper published in the county where such property is stored, then notice may be given in the newspaper published nearest thereto, in some other county, in this state. But no more of such property shall be sold than is necessary to pay the charges due, together with the costs.

History: Ap. p. Sec. 1, p. 544, Cod. Stat. 1871; re-en. Sec. 1179, 5th Div. Rev. Stat. 1879; re-en. Sec. 1983, 5th Div. Comp. Stat. 1887; amd. Sec. 2495, Civ. C. 1895; amd. Sec. 1, p. 153, L. 1901; re-en. Sec. 5162, Rev. C. 1907; re-en. Sec. 7665, R. C. M. 1921. Cal. Civ. C. Secs. 1856 and 1857.

Cross-Reference

Sale by innkeepers, sec. 34-104.

Collateral References

Carriers↔197; Factors↔47; Warehousemen↔29-33.

13 C.J.S. Carriers § 324 et seq.; 35 C.J.S. Factors § 45 et seq.; 67 C.J. Warehousemen and Safe Depositaries § 199 et seq.

9 Am. Jur. 781, Carriers, §§ 595-597; 56 Am. Jur. 373, Warehouses, §§ 111-114.

20-307. (7666) Application of proceeds of sale. After paying the expenses of sale, including the publication of notice, the storage or commission merchant, or the carrier, shall be authorized, out of the proceeds arising from the sale of the property, to retain the amount due him for storage or freight money, or both, due upon any such property, and the excess, if any, must be paid over to the person entitled to the proceeds thereof. All sales under this chapter shall vest the title to the property sold in the purchaser thereof.

History: Ap. p. Sec. 3, p. 545, Cod. Stat. 1871; re-en. Sec. 1181, 5th Div. Rev. Stat. 1879; re-en. Sec. 1895, 5th Div. Comp. Stat. 1887; amd. Sec. 2496, Civ. C. 1895; re-en. Sec. 2, p. 153, L. 1901; re-en. Sec. 5163, Rev. C. 1907; re-en. Sec. 7666, R. C. M. 1921.

Collateral References

Carriers ↔ 197(7); Factors ↔ 47(6); Warehousemen↔33.

13 C.J.S. Carriers § 331; 35 C.J.S. Factors § 48; 67 C.J. Warehousemen and Safe Depositaries § 199 et seq.

56 Am. Jur. 374, Warehouses, § 114.

20-308. (7667) Storage of unclaimed property. When any goods, merchandise, or other property has been received by any railroad or express company, or other common carrier, commission merchants, or warehousemen, for transportation or safekeeping, and are not delivered to the owner,

consignee, or other authorized person, the carrier, commission merchant, or warehouseman may hold or store the same with some responsible person until the freight and all just and reasonable charges are paid.

History: En. Sec. 2920, Pol. C. 1895;
re-en. Sec. 2003, Rev. C. 1907; re-en. Sec.
7667, R. C. M. 1921. Cal. Pol. C. Sec. 3152.

20-309. (7668) Property unclaimed within ninety days to be sold, how.

If no person calls for the property within ninety days from the receipt thereof, and pays freight and charges thereon, the carrier, commission merchant, or warehouseman may sell such property, or so much thereof, at auction to the highest bidder, as will pay freight and charges, first having given twenty days' notice of the time and place of sale to the owner, consignee, or consignor, when known, and by advertisement in a daily paper ten days (or if in a weekly paper, four weeks), published where such sale is to take place; and if any surplus is left after paying freight, storage, cost of advertising, and other reasonable charges, the same must be paid over to the owner of such property at any time thereafter, upon demand being made therefor or within sixty days after the sale.

History: En. Sec. 2921, Pol. C. 1895;
re-en. Sec. 2004, Rev. C. 1907; re-en. Sec.
7668, R. C. M. 1921. Cal. Pol. C. Sec.
3153.

Collateral References

9 Am. Jur. 781, Carriers, §§ 595-597; 31
Am. Jur. 749, Justices of the Peace, § 77;
56 Am. Jur. 373, Warehouses, §§ 111-114.

20-310. (7669) Proceeds unclaimed, where to go. If the owner or his agent fails to demand such surplus within sixty days of the time of such sale, then it must be paid into the county treasury, subject to the order of the owner.

History: En. Sec. 2922, Pol. C. 1895;
re-en. Sec. 2005, Rev. C. 1907; re-en. Sec.
7669, R. C. M. 1921. Cal. Pol. C. Sec.
3154.

Collateral References

Escheat⇒3, 4.
30 C.J.S. Escheat §§ 2, 3.

20-311. (7670) Carrier's responsibility ceases, when. After the storage of goods, merchandise, or property, as herein provided, the responsibility of the carrier ceases, nor is the person with whom the same is stored liable for any loss or damage on account thereof, unless the same results from his negligence or want of proper care.

History: En. Sec. 2923, Pol. C. 1895;
re-en. Sec. 2006, Rev. C. 1907; re-en. Sec.
7670, R. C. M. 1921. Cal. Pol. C. Sec.
3155.

Collateral References

Carriers⇒114.
13 C.J.S. Carriers § 333.

20-312. (7671) Property upon which advances are due may be sold, when. When any commission merchant or warehouseman receives on consignment produce, merchandise, or other property, and makes advances thereon, either to the owner or for freight and charges, he may, if the same is not paid to him within ninety days from the date of such advances, cause the produce, merchandise, or property, on which the advances were made, to be advertised and sold as provided herein.

History: En. Sec. 2924, Pol. C. 1895;
re-en. Sec. 2007, Rev. C. 1907; re-en. Sec.
7671, R. C. M. 1921. Cal. Pol. C. Sec.
3156.

Collateral References

Factors⇒47; Warehousemen⇒29-33.
35 C.J.S. Factors § 45 et seq.; 67 C.J.
Warehousemen and Safe Depositaries § 199
et seq.

20-313. (7672) Fees of officers. The fees of officers under this chapter are the same as allowed for similar services in other cases provided in this code, to be paid by the taker-up or finder and recovered of the owner.

History: En. Sec. 2925, Pol. C. 1895;
re-en. Sec. 2008, Rev. C. 1907; re-en. Sec.
7672, R. C. M. 1921. Cal. Pol. C. Sec.
3157.

Collateral References
Officers \Rightarrow 94, 97.
67 C.J.S. Officers §§ 83, 99.

CHAPTER 4

DEPOSIT FOR KEEPING—FINDING—LOST PROPERTY

- Section 20-401. Obligation of finder.
20-402. Finder to notify owner.
20-403. Claimant to prove ownership.
20-404. Reward, etc., to finder.
20-405. Finder may put thing found on storage.
20-406. When finder may sell the thing found.
20-407. How sale is to be made.
20-408. Surrender of thing to the finder.
20-409. Thing abandoned.
20-410. Duty of person finding lost money, goods, etc.
20-411. Justice to appoint appraisers—duty of appraisers.
20-412. Justice to file list of appraisers.
20-413. Proceedings if no owner appears within six months.
20-414. Finder to restore property, when—owner may sue, when.
20-415. Finder failing to make discovery—penalty.
20-416. Proof—how made.

20-401. (7685) Obligation of finder. One who finds a thing lost is not bound to take charge of it, but if he does so he is thenceforth a depositary for the owner, with the rights and obligations of a depositary for hire.

History: En. Sec. 2520, Civ. C. 1895;
re-en. Sec. 5178, Rev. C. 1907; re-en. Sec.
7685, R. C. M. 1921. Cal. Civ. C. Sec.
1864. Field Civ. C. Sec. 938.

Cross-Reference

Stolen property, disposition, secs. 94-9701 to 94-9707.

Operation and Effect

The complainant in an action on a liability or obligation imposed by special statute must state facts that bring the plaintiff squarely within its terms. *Kirk v. Smith*, 48 M 489, 492, 138 P 1088.

Id. Assuming that sections 20-401 to 20-409 are applicable to the case of one who picks up estray domestic animals, takes care of and feeds them, a complaint which omitted to allege that the animals were in fact lost did not state a cause of action under said sections.

Id. In an action for compensation for finding, taking care of, and feeding a band of sheep, the plaintiff must recover on the basis of compensation alone; he is not entitled to recover a gratuity; but he can recover for his services, though the sheep have been mingled with other sheep, if he can show the value of the proportion of his time, labor, feed, etc., given to the estrays.

Id. This section must be construed with section 20-404 and, when so construed, the terms of this section are made plain. The depositary for hire is only entitled to ordinary compensation, except in so far as this rule is modified by section 20-303.

Collateral References

Finding Lost Goods \Rightarrow 4-9.
36 C.J.S. Finding Lost Goods §§ 3, 4, 7.
34 Am. Jur. 635, Lost Property, §§ 6 et seq.

20-402. (7686) Finder to notify owner. If the finder of a thing knows or suspects who is the owner, he must, with reasonable diligence, give him notice of the finding; and if he fails to do so, he is liable in damages to the owner, and has no claim to any reward offered by him for the recovery of the thing, or to any compensation for his trouble or expenses.

History: En. Sec. 2521, Civ. C. 1895; 7686, R. C. M. 1921. Cal. Civ. C. Sec. 1865.
re-en. Sec. 5179, Rev. C. 1907; re-en. Sec. Field Civ. C. Sec. 939.

20-403. (7687) Claimant to prove ownership. The finder of a thing may, in good faith, before giving it up, require reasonable proof of ownership from any person claiming it.

History: En. Sec. 2522, Civ. C. 1895;
re-en. Sec. 5180, Rev. C. 1907; re-en. Sec.
7687, R. C. M. 1921. Cal. Civ. C. Sec.
1866. Field Civ. C. Sec. 940.

Collateral References

34 Am. Jur. 641, Lost Property, § 14.

20-404. (7688) Reward, etc., to finder. The finder of a thing is entitled to compensation for all expenses necessarily incurred by him in its preservation, and for any other service necessarily performed by him about it, and to a reasonable reward for keeping it.

History: En. Sec. 2523, Civ. C. 1895;
re-en. Sec. 5181, Rev. C. 1907; re-en. Sec.
7688, R. C. M. 1921. Cal. Civ. C. Sec. 1867.
Field Civ. C. Sec. 941.

Collateral References

46 Am. Jur. 107, Rewards, § 3.

20-405. (7689) Finder may put thing found on storage. The finder of a thing may exonerate himself from liability at any time by placing it on storage with any responsible person of good character, at a reasonable expense.

History: En. Sec. 2524, Civ. C. 1895;
re-en. Sec. 5182, Rev. C. 1907; re-en. Sec.

7689, R. C. M. 1921. Cal. Civ. C. Sec. 1868.
Field Civ. C. Sec. 942.

20-406. (7690) When finder may sell the thing found. The finder of a thing may sell it, if it is a thing which is commonly the subject of sale, when the owner cannot, with reasonable diligence, be found, or, being found, refuses upon demand to pay the lawful charges of the finder, in the following cases:

1. When the thing is in danger of perishing, or of losing the greater part of its value; or,
2. When the lawful charges of the finder amount to two-thirds of its value.

History: En. Sec. 2525, Civ. C. 1895;
re-en. Sec. 5183, Rev. C. 1907; re-en. Sec.

7690, R. C. M. 1921. Cal. Civ. C. Sec. 1869.
Field Civ. C. Sec. 943.

20-407. (7691) How sale is to be made. A sale under the provisions of the last section must be made in the same manner as the sale of a thing pledged.

History: En. Sec. 2526, Civ. C. 1895;
re-en. Sec. 5184, Rev. C. 1907; re-en. Sec.

7691, R. C. M. 1921. Cal. Civ. C. Sec. 1870.
Field Civ. C. Sec. 944.

20-408. (7692) Surrender of thing to the finder. The owner of a thing found may exonerate himself from the claims of the finder by surrendering it to him in satisfaction thereof.

History: En. Sec. 2527, Civ. C. 1895;
re-en. Sec. 5185, Rev. C. 1907; re-en. Sec.

7692, R. C. M. 1921. Cal. Civ. C. Sec. 1868.
Field Civ. C. Sec. 945.

20-409. (7693) Thing abandoned. The provisions of this chapter have no application to things which have been intentionally abandoned by their owners.

History: En. Sec. 2528, Civ. C. 1895;
re-en. Sec. 5186, Rev. C. 1907; re-en. Sec.
7693, R. C. M. 1921. Cal. Civ. C. Sec. 1872.
Field Civ. C. Sec. 946.

References

Cited or applied as section 5186, Revised
Codes, in *Kirk v. Smith*, 48 M 489, 492,
138 P 1088.

Collateral References

1 C.J.S. Abandonment § 9.

Abandonment 7.

20-410. (7694) Duty of person finding lost money, goods, etc. If any person find any money, goods, things in action, or other personal property, or save any domestic animal from drowning or from starvation, when such property is of the value of ten dollars or more, he must inform the owner thereof, if known, and make restitution without compensation, further than a reasonable charge for saving and taking care thereof; but if the owner is not known to the party saving or finding such property, he must, within five days, make an affidavit before some justice of the peace of the county, stating when and where he found or saved such property, particularly describing it; and if the property was saved, particularly from what and how he saved the same, stating therein whether the owner of the property is known to him, and that he has not secreted, withheld, or disposed of any part of such property.

History: En. Sec. 2900, Pol. C. 1895;
re-en. Sec. 1996, Rev. C. 1907; re-en. Sec.
7694, R. C. M. 1921. Cal. Pol. C. Sec. 3136.

Collateral References

34 Am. Jur. 635, Lost Property, §§ 6 et
seq.

20-411. (7695) Justice to appoint appraisers—duty of appraisers. The justice must then summon three disinterested householders to appraise the same. The appraisers, or any two of them, must make two lists of the valuation and description of such property, and sign and make oath to the same, and deliver one of the lists to the finder, and the other to the justice of the peace.

History: En. Sec. 2901, Pol. C. 1895;
re-en. Sec. 1997, Rev. C. 1907; re-en. Sec.
7695, R. C. M. 1921. Cal. Pol. C. Sec. 3137.

20-412. (7696) Justice to file list of appraisers. The justice must file such list, and the finder must transmit a copy of the same to the county clerk of the county, who must record the same in a book known as the "Estray and Lost Property Book," within fifteen days, and the finder must at once set up at the courthouse door and four other public places in the township or city a copy of such valuation and a description of property.

History: En. Sec. 2902, Pol. C. 1895;
re-en. Sec. 1998, Rev. C. 1907; re-en. Sec.
7696, R. C. M. 1921. Cal. Pol. C. Sec. 3138.

20-413. (7697) Proceedings if no owner appears within six months. If no owner appears and proves the property within six months, and the value thereof does not exceed twenty dollars, the same vests in the finder; but if the value exceeds twenty dollars, the finder must, within thirty days after setting up the list mentioned in the preceding section, cause a copy of the description to be inserted in some newspaper printed in the county if there be one, and if not, in some newspaper printed in the state, for three weeks; and if no owner prove the property within one year after such publication it vests in finder.

History: En. Sec. 2903, Pol. C. 1895;
re-en. Sec. 1999, Rev. C. 1907; re-en. Sec.
7697, R. C. M. 1921. Cal. Pol. C. Sec. 3139.

20-414. (7698) Finder to restore property, when—owner may sue, when. If, within one year, an owner appears and proves the property and pays all

reasonable charges, including fees of officers, the finder must restore the same to him. On failure to make restoration of such property, or the appraised value thereof, on being tendered such charges and fees, the owner may recover the same, or the value thereof, by civil action in any court having jurisdiction.

History: En. Sec. 2904, Pol. C. 1895; re-en. Sec. 2000, Rev. C. 1907; re-en. Sec. 7698, R. C. M. 1921. Cal. Pol. C. Sec. 3140.

20-415. (7699) Finder failing to make discovery—penalty. If any person find any money, property, or other valuable thing, and fail to make discovery of the same as required by this chapter, he forfeits to the owner double the value thereof.

History: En. Sec. 2905, Pol. C. 1895; re-en. Sec. 2001, Rev. C. 1907; re-en. Sec. 7699, R. C. M. 1921. Cal. Pol. C. Sec. 3141.

20-416. (7700) Proof—how made. The proof required by this chapter must be made before the county clerk with whom the list provided for herein is filed, and if he is satisfied therefrom that the person claiming to be is the owner, he must certify that fact under his hand and seal.

History: En. Sec. 2906, Pol. C. 1895; re-en. Sec. 2002, Rev. C. 1907; re-en. Sec. 7700, R. C. M. 1921. Cal. Pol. C. Sec. 3142.

CHAPTER 5

DEPOSIT FOR EXCHANGE

Section 20-501. Relations of the parties.

20-501. (7701) Relations of the parties. A deposit for exchange transfers to the depositary the title to the thing deposited, and creates between him and the depositor the relation of debtor and creditor merely.

History: En. Sec. 2540, Civ. C. 1895; re-en. Sec. 5187, Rev. C. 1907; re-en. Sec. 7701, R. C. M. 1921. Cal. Civ. C. Sec. 1878. Field Civ. C. Sec. 947.

Operation and Effect



By a deposit, other than special, in a bank, the money becomes the property of the bank, and the relation of debtor and creditor is created. *Stadler v. First National Bank*, 22 M 190, 215, 56 P 111.

By accepting a deposit for the purpose of exchange, a bank becomes the debtor of the depositor. *Murphy v. Nett*, 51 M 82, 87, 149 P 713; *In re Williams' Estate*, 55 M 63, 70, 173 P 790.

References

Cited or applied as section 5187, Revised Codes, in *Hanson Sheep Co. v. Farmers' & Traders' State Bank*, 53 M 324, 334, 163 P 1151; *Jensen v. Laurel Meat Co.*, 71 M 582, 590, 230 P 1081.

Collateral References

Depositories  1; Exchange of Property  1.
26 C.J.S. Depositories § 2; 33 C.J.S. Exchange of Property § 1.

TITLE 21

DIVORCE

Chapter 1. Dissolution of marriage—divorce, 21-101 to 21-149.

CHAPTER 1

DISSOLUTION OF MARRIAGE—DIVORCE

- Section 21-101. Marriage—how dissolved.
21-102. Effect of divorce.
21-103. Causes for divorce.
21-104. Incurable insanity.
21-105. Adultery defined.
21-106. Extreme cruelty defined.
21-107. Desertion, what constitutes.
21-108. Who commits desertion.
21-109. Separation by consent not desertion.
21-110. Separation and intent.
21-111. Consent to separation revocable.
21-112. Desertion—how cured.
21-113. Husband may select home.
21-114. If place unfit, desertion on part of husband.
21-115. Wilful neglect, what constitutes.
21-116. Habitual intemperance, what constitutes.
21-117. Desertion, neglect or habitual intemperance for one year.
21-118. Divorces denied, on showing what.
21-119. Connivance, what constitutes.
21-120. Collusion, what constitutes.
21-121. Condonation, what constitutes.
21-122. Requisites to condonation.
21-123. Condonation implies what.
21-124. Evidence of condonation.
21-125. When condonation can only be made.
21-126. Concealment of facts in certain cases makes condonation void.
21-127. Condonation—how revoked.
21-128. Recrimination, what constitutes.
21-129. Condonation in a recriminatory defense—when a bar to defense.
21-130. Divorce—when denied.
21-131. Lapse of time establishes certain presumptions.
21-132. Presumptions may be rebutted.
21-133. Limitation of time.
21-134. Period of residence required to entitle plaintiff to divorce.
21-135. Divorce not granted by default alone, etc.
21-136. Relief may be adjudged, when divorce is denied.
21-137. Expenses of action—alimony.
21-138. Orders respecting custody of children.
21-139. Support of wife and children on divorce or separation granted to wife.
21-140. Security for maintenance and alimony.
21-141. If wife has sufficient support, court may withhold allowance.
21-142. Property may be subjected to support and education of children.
21-143. Legitimacy of issue—divorce for adultery of husband.
21-144. Same—divorce for adultery of wife.
21-145. Disposition of homestead on divorce.
21-146. Same—order of court concerning.
21-147. Same—subject to revision on appeal.
21-148. Poor woman may sue without costs.
21-149. Notice of application for alimony.

21-101. (5734) Marriage—how dissolved. Marriage is dissolved only:

1. By the death of one of the parties; or,
2. By a judgment of a court of competent jurisdiction.

History: En. Sec. 130, Civ. C. 1895; Divorce decrees certified to state registrar, sec. 69-536.
 re-en. Sec. 3641, Rev. C. 1907; re-en. Sec. 5734, R. C. M. 1921. Cal. Civ. C. Sec. 90.

Cross-References

Advertising to procure divorce, penalty, sec. 94-3566.

Collateral References

Divorce \hookrightarrow 1.
 27 C.J.S. Divorce § 7.

21-102. (5735) Effect of divorce. The effect of a judgment of divorce is to restore the parties to the state of unmarried persons.

History: En. Sec. 131, Civ. C. 1895; re-en. Sec. 3642, Rev. C. 1907; re-en. Sec. 5735, R. C. M. 1921. Cal. Civ. C. Sec. 91.

Collateral References

17 Am. Jur., Divorce and Separation, p. 356, §§ 424 et seq.; p. 538, §§ 709 et seq.

Operation and Effect

A decree of divorce, absolute on its face and duly entered by a court of competent jurisdiction, bars the subsequent assertion of dower. *O'Malley v. O'Malley*, 46 M 549, 556, 129 P 501.

A divorce judgment, appealed from, becomes final in such sense as to restore parties to state of unmarried persons under this section, only on determination of appeal in respondent's favor, and appeal suspends judgment until it is held valid on such determination. *Judson v. Anderson*, 118 M 106, 165 P 2d 198, 207.

Propriety and effect of provision in decree in divorce suit in respect of policy of insurance on life of husband. 145 ALR 522.

Death of party to divorce suit after final divorce decree but pending appeal or period allowed for appeal. 148 ALR 1111.

Domestic decree of divorce based upon a finding of invalidity of a previous divorce in another state, as estopping party to the domestic suit to assert, in a subsequent litigation, the validity of the divorce decree in the other state. 150 ALR 465.

21-103. (5736) Causes for divorce. Absolute divorces, or separations from bed and board, or decrees for separate maintenance, may be granted for any of the following causes:

1. Incurable insanity;
2. Adultery;
3. Extreme cruelty;
4. Wilful desertion;
5. Wilful neglect;
6. Habitual intemperance;
7. Conviction of felony.

History: Earlier acts concerning divorce; Sections 1 to 5, pp. 430 and 431, Bannack Statutes; re-enacted as sections 1 to 5, pp. 457 and 458, Codified Statutes 1871; re-enacted as sections 507 to 511, Fifth Division Revised Statutes 1879; re-enacted as sections 999 to 1003, Compiled Statutes 1887.

This section En. Sec. 132, Civ. C. 1895; amd. Sec. 1, Ch. 118, L. 1907; re-en. Sec. 3643, Rev. C. 1907; re-en. Sec. 5736, R. C. M. 1921; amd. Sec. 1, Ch. 65, L. 1937; amd. Sec. 1, Ch. 185, L. 1945. Cal. Civ. C. Sec. 92.

Cross-Reference

Confession of adultery does not justify divorce, sec. 93-2201-6.

Agreement for Divorce Void—Property Settlement Binding

While an agreement between husband and wife making a property settlement and providing for separation and divorce is void on the ground of public policy, equity will, in a subsequent suit for divorce by husband, hold the agreement separable and will not permit him to profit by its provisions and avoid its objectionable parts by invoking the rule, but will hold the part relating to divorce void, and the part referring to property settlement binding upon both parties. *Herrin v. Herrin*, 103 M 469, 473, 63 P 2d 137.

Complaint

Where complaint alleged that defendant since September 3rd, 1944, neglected plaintiff and suit was filed August 18, 1945, the complaint was insufficient to charge wilful neglect within the statute. *Shaw v. Shaw*, 122 M 593, 208 P 2d 514, 520.

Divorce Granted in Other State

No public policy of the state of Montana is violated by recognizing a Nevada divorce granted on the same grounds as the same divorce could have been granted in Montana. *In re Anderson's Estate*, 121 M 515, 194 P 2d 621, 625.

References

Cited or applied as section 132, Civil Code, before amendment, in *Bordeaux v. Bordeaux*, 30 M 36, 42, 75 P 524; as section 3643, Revised Codes, in *Decker v. Decker*, 56 M 338, 185 P 168; *State ex rel. La Point v. District Court*, 69 M 29, 31, 220 P 88; *Giebler v. Giebler*, 69 M 347, 350, 222 P 436; *Clem v. Clem*, 97 M 570, 575, 36 P 2d 1034; *Carboni v. Carboni*, 99 M 279, 43 P 2d 634.

Collateral References

Divorce—12 et seq.; Husband and Wife —285½.

27 C.J.S. Divorce § 14; 42 C.J.S. Husband and Wife § 614.

17 Am. Jur. 163, Divorce and Separation, §§ 25 et seq.

Collusion as bar to divorce. 2 ALR 699.

Desertion as affected by remonstrance or resistance. 3 ALR 503.

Forcing spouse to get rid of child by former marriage as cruelty. 3 ALR 803.

Abuse by relatives of other spouse as cruelty constituting grounds for divorce. 3 ALR 993.

Communication of venereal disease as cruelty. 5 ALR 1016.

Charge of insanity or attempt to have spouse committed to an insane asylum as grounds for divorce. 18 ALR 572.

Offer, after lapse of statutory period of desertion, to resume marital relations. 18 ALR 630.

Single act as basis of divorce or separation on ground of cruelty. 24 ALR 918.

Divorce for desertion predicated upon conduct subsequent to a decree of separation. 25 ALR 1047.

Adultery by deserted spouse after desertion as ground of divorce in favor of other spouse. 25 ALR 1051.

Religious differences. 28 ALR 1163.

Refusal of one spouse to live with relatives of other as affecting desertion as ground of divorce or separation. 38 ALR 338.

Insanity as affecting right to divorce or separation on other grounds. 42 ALR 1531.

Charges in divorce suit of marital misconduct as cruelty within statute defining grounds of divorce. 51 ALR 1188.

Necessity of continuance of drunkenness until commencement of suit or later. 54 ALR 331.

Discretion as to denial of divorce or separation where statutory grounds are established. 74 ALR 271.

Condonation of cruel treatment as defense in divorce action. 98 ALR 1354.

Insanity as substantive ground of divorce or separation. 113 ALR 1248.

What amounts to habitual intemperance, drunkenness, etc., within statute relating to substantive grounds for divorce. 120 ALR 1176.

Adultery or other acts constituting grounds of divorce occurring after commencement of suit for divorce. 127 ALR 679.

Cruelty predicated upon acts or conduct during separation as ground for divorce or separation. 129 ALR 160.

Death of party to divorce suit after final divorce decree but pending appeal or period allowed for appeal. 148 ALR 1111.

"Recrimination" as available defense in suit for divorce based on separation for specified period. 152 ALR 336.

Individual acts of cohabitation between husband and wife as breaking continuity of abandonment, desertion, or separation, or as condonation thereof. 155 ALR 132.

Association or conduct of spouse with persons of opposite sex as cruelty or abusive treatment justifying divorce or separation. 157 ALR 631.

Conduct of plaintiff in divorce suit, not of itself a cause for divorce, as basis of defense of recrimination. 159 ALR 1453.

Divorce on ground of husband's gifts of his property to third persons. 160 ALR 620.

Avoidance of procreation of children as ground for divorce and separation. 4 ALR 2d 235.

Conviction in another jurisdiction as within statute making conviction of crime a ground of divorce. 19 ALR 2d 1047.

Racial, religious, or political differences as ground for divorce, separation, or annulment. 25 ALR 2d 928.

Wife's failure to follow husband to new domicile as constituting desertion or abandonment as ground for divorce. 29 ALR 2d 474.

Use of drugs as habitual intemperance within statute relating to substantive grounds for divorce. 29 ALR 2d 925.

Charge of insanity or attempt to have spouse committed to mental institution as ground for divorce or judicial separation. 33 ALR 2d 1230.

21-104. (5736.1) Incurable insanity. Incurable insanity may be established on the testimony of competent physicians that such person is beyond medical and surgical remedy, providing, however, that no divorce shall be granted on the grounds of incurable insanity unless such insane person has been regularly confined in any state or private institution for the permanent care of insane persons for at least five years next preceding the commencement of the action for divorce. In prosecuting a divorce upon this ground, a copy of the complaint filed and summons issued in said action shall be served in such manner as the court may direct upon the nearest blood relative, if any, and guardian, if any, of any such insane person, and the superintendent of the institution in which he or she is confined. Such relative or guardian and superintendent of the institution and such insane person shall be entitled to appear and be heard upon any and all issues. The status of the parties as to the support and maintenance of such insane person shall not be altered in any way by the granting of the divorce. The general procedure for publication of service of summons shall be applicable under the terms of this act.

History: En. Sec. 2, Ch. 65, L. 1937; amd. Sec. 2, Ch. 185, L. 1945.

Collateral References

Divorce—17, 23, 128; Husband and Wife—285½, 297.

27 C.J.S. Divorce §§ 20, 49, 135; 42 C. J.S. Husband and Wife §§ 614, 621.

17 Am. Jur. 226, Divorce and Separation, §§ 149-152.

Charge of insanity or attempt to have spouse committed to an insane asylum as ground for divorce. 18 ALR 572.

Insanity as affecting right to divorce or separation on other grounds. 42 ALR 1531.

Insanity as substantive ground of divorce or separation. 113 ALR 1248.

Requisites of proof of insanity as ground for divorce. 15 ALR 2d 1135.

Insanity as substantive ground of divorce or separation. 24 ALR 2d 873.

Charge of insanity or attempt to have spouse committed to mental institution as ground for divorce or judicial separation. 33 ALR 2d 1230.

21-105. (5737) Adultery defined. Adultery is the voluntary sexual intercourse of a married person with a person other than the offender's husband or wife.

History: En. Sec. 133, Civ. C. 1895; re-en. Sec. 3644, Rev. C. 1907; re-en. Sec. 5737, R. C. M. 1921. Cal. Civ. C. Sec. 93.

Collateral References

Divorce—26.

27 C.J.S. Divorce § 21.

17 Am. Jur. 169, Divorce and Separation, §§ 35-39.

21-106. (5738) Extreme cruelty defined. Extreme cruelty is any one of the following acts:

(1) The infliction or threat of infliction of grievous bodily injury or of bodily injury dangerous to life; or

(2) The repeated infliction or threat of bodily injury or personal violence upon the other party by one party to the marriage; or

(3) The repeated publication or utterance of false charges against the chastity of the wife by the husband; or

(4) The infliction of grievous mental suffering upon the other by one party to the marriage, by a course of conduct towards or treatment of one party to the marriage by the other, existing and persisted in for a period of one (1) year before the commencement of the action for divorce, which justly and reasonably is of such a nature and character as to destroy the peace of mind and happiness of the injured party, or entirely to defeat

the proper and legitimate objects of marriage, or to render the continuance of the married relation between the parties perpetually unreasonable or intolerable to the injured party. The complainant in such suit may state the grounds for divorce in the words of the statute, but either party may demand a bill of particulars as in other civil cases.

History: En. Sec. 134, Civ. C. 1895; re-en. Sec. 2, Ch. 118, L. 1907; re-en. Sec. 3645, Rev. C. 1907; re-en. Sec. 5738, R. C. M. 1921; amd. Sec. 1, Ch. 22, L. 1931; amd. Sec. 1, Ch. 19, L. 1949; amd. Sec. 1, Ch. 169, L. 1953. Cal. Civ. C. Sec. 94.

Complaint

Grievous bodily injury or bodily injury dangerous to life are ultimate facts which must be pleaded and proved in order to entitle plaintiff to a divorce on the ground of extreme cruelty. *Ryan v. Ryan*, 33 M 406, 409, 84 P 494.

Id. A complaint in an action for divorce upon the ground of extreme cruelty, in that defendant struck, beat, and choked plaintiff and otherwise brutally treated her, but which omitted to allege that the acts of defendant produced grievous bodily injury or bodily injury dangerous to life, failed to state a cause of action.

A complaint in an action for divorce drawn under the clause of this section, defining "extreme cruelty" as the infliction of grievous mental suffering caused by conduct of the defendant therein described, is sufficient if the acts of cruelty destroy the peace of mind and happiness of the plaintiff. *Bickford v. Bickford*, 94 M 314, 317, 22 P 2d 306.

Complaint alleging that defendant wife left home of plaintiff without his consent and remained away for many months at a time; that defendant was sullen and sulky, refusing to converse with plaintiff except to find fault with and nag him, refused to prepare his breakfast and seldom prepared his supper, refused to go out with him and continuously complained of being mistreated by him without cause, held sufficient to charge cruelty under this section. *Kerrigan v. Kerrigan*, 115 M 136, 142, 139 P 2d 533.

Id. As against the contention that the complaint charging that the wife's course of conduct persisted for a period of more than one year before the commencement of the action and ever since their marriage was insufficient in failing to allege that the acts of cruelty occurred within one year immediately preceding the commencement of the action, held, sufficient as against a general demurrer to meet the requirement of this section.

In an action for divorce by the husband, cross-complaint of the wife charging that the children of plaintiff by a former marriage showed great hostility to their father's remarriage, that plaintiff from

time to time mentioned these complaints to her, etc., and that plaintiff had accused defendant of being a dope fiend and engaged in the sale of narcotics, held sufficient to charge mental cruelty, under this section. *Detert v. Detert*, 115 M 313, 319, 142 P 2d 215.

A complaint for divorce on ground of grievous mental suffering must allege, and evidence must show, the conduct toward or treatment of the injured spouse to have been existing and persisted in for a period of one year before commencement of action. *Crenshaw v. Crenshaw*, 120 M 190, 182 P 2d 477, 485.

Id. A pleading which attempted to charge husband with extreme cruelty in language of the statute defining extreme cruelty as a ground for divorce and also by indefinite general charges and conclusions, was insufficient.

Id. A complaint for divorce on ground of extreme cruelty must disclose the facts upon which the conclusion can be drawn by the court that defendant by a course of conduct toward or treatment of plaintiff is guilty of the character or degree of extreme cruelty that is defined in the statute.

Id. Plaintiff must plead and prove that extreme cruelty relied on as ground for divorce was existing and persisted in before action was filed.

Continuous Nagging

Continuous nagging of one spouse by the other may constitute extreme cruelty for the infliction of which an action for divorce lies under this section. *Putnam v. Putnam*, 86 M 135, 139 et seq., 282 P 855.

Desertion Due to Cruelty

Held, that this section and section 21-108, providing that departure or absence of one spouse from the family dwelling because of cruelty on the part of the other, shall constitute desertion by such other are in *pari materia* and must be construed together; that therefore the contention of defendant wife charged with desertion because of infliction of cruelty upon the husband by reason of which he was compelled to leave the family home, that the cruelty mentioned in section 21-108, means the infliction of personal violence and not the cruelty as defined by this section, to-wit, the infliction of grievous mental suffering, may not be sustained; in either event the guilty party is the deserter. *Putnam v. Putnam*, 86 M 135, 139 et seq., 282 P 855.

Evidence Held Insufficient to Establish Extreme Cruelty

Evidence held insufficient to establish wife's extreme cruelty entitling husband to divorce under this section. *Judson v. Anderson*, 118 M 106, 165 P 2d 198, 199.

Id. A wife, refusing to join husband in execution of deeds to his real estate in which wife has interest under statute, is not guilty of marital offense entitling husband to divorce.

Evidence was held insufficient to sustain granting of divorce on grounds of grievous mental suffering under this section. *Crenshaw v. Crenshaw*, 120 M 190, 182 P 2d 477, 488, 489, 490.

Extreme Cruelty Not Definable

The term "extreme cruelty" for which, under this section, a divorce may be granted is incapable of inclusive and exclusive definition, and whether an offending spouse has been guilty of such cruelty is solely a question of fact determinable from all the testimony presented. *Williams v. Williams*, 85 M 446, 449, 278 P 1009.

Guilt Depends Not Upon Acts Charged, But Upon Reaction Upon Complainant

Whether defendant wife was guilty of extreme cruelty as defined in this section, was a question of fact to be determined from all the testimony presented; the particular acts of cruelty complained of not being in themselves determining factors, the question rather being whether such acts were of such a nature and character as to destroy the peace of mind and happiness of the complaining husband. *Kerrigan v. Kerrigan*, 115 M 136, 143, 139 P 2d 533.

Incompatibility Not Ground for Divorce in Montana

The burden was upon plaintiff of showing that the husband, charged with extreme cruelty, was guilty of acts condemned by this section defining it, but where the evidence shows little more than incompatibility (not made a ground for divorce in Montana), and not resulting in ill effects on the health of the wife, the evidence is insufficient to warrant her a decree of divorce. The marital disturbances in the case at bar under the facts presented, were caused chiefly by disparity of ages, the wife desiring they attend social gatherings of persons her age, twenty years younger than her husband. *Argenbright v. Argenbright*, 110 M 379, 382, 101 P 2d 62.

No Inclusive and Exclusive Definition of Legal Cruelty

Where extreme cruelty is charged in a divorce proceeding, each case must be determined upon its own peculiar facts; the

courts have not attempted to make an inclusive and exclusive definition of legal cruelty; the particular acts of cruelty of which complaint is made are not in themselves determining factors, and whether defendant has been guilty of such cruelty as defined by this section is purely a question of fact to be determined from all the testimony presented. *Wolz v. Wolz*, 110 M 458, 460, 102 P 2d 22.

One Act of Injury

One act of bodily injury suffered less than a year before the commencement of the action does not constitute grounds for divorce. *Shaw v. Shaw*, 122 M 593, 208 P 2d 514, 520.

Statutory Time for Existence of Cruelty

Where the act of defendant wife, upon which the alleged cruelty was based (placing deeds to his property on record, given her on the condition that they be not recorded until his death) was done in November, 1940, and not brought to his knowledge until June, 1941, and the suit not brought until January 7, 1942, it can hardly be thought to have immediately started the course of mental cruelty and suffering contemplated by this section, nor that the evidence establishes mental cruelty within the requirement in *Argenbright v. Argenbright*, 110 M 379, 101 P 2d 62, and it is clear that plaintiff is not entitled to a divorce. *Detert v. Detert*, 115 M 313, 318, 142 P 2d 215.

What Are Determining Factors

The particular acts of cruelty of which complaint is made in a divorce proceeding are not in themselves determining factors in deciding whether a divorce on the ground of extreme cruelty shall be granted, but the question is whether the acts of cruelty are of such a nature and character as to destroy the peace of mind and happiness of the injured party. *Williams v. Williams*, 85 M 446, 449, 278 P 1009.

While this section, defining extreme cruelty for which an action for divorce lies, does not in terms provide that repeated false and malicious accusations by the wife charging the husband with marital infidelity shall constitute cruelty on her part, such accusations may inflict grievous mental suffering so as to destroy the peace of mind and happiness of the husband and to render the continuance of the marriage relation between the parties perpetually unreasonable and intolerable to him and, therefore, justify divorce under the above section. *Putnam v. Putnam*, 86 M 135, 139 et seq., 282 P 855.

References

Giebler v. Giebler, 69 M 347, 350, 222 P 436; *Poague v. Poague*, 87 M 433, 434,

288 P 454; *Baird v. Baird*, 125 M 122, 232 P 2d 348, 356.

Collateral References

Divorce—27.

27 C.J.S. Divorce § 24 et seq.

17 Am. Jur. 174, Divorce and Separation, §§ 48-86.

Forcing spouse to get rid of child by former marriage as cruelty. 3 ALR 803.

Abuse by relatives of other spouse as cruelty constituting grounds for divorce. 3 ALR 993.

Communication of venereal disease as cruelty. 5 ALR 1016.

21-107. (5739) Desertion, what constitutes. Wilful desertion is the voluntary separation of one of the married parties from the other with intent to desert.

History: En. Sec. 135, Civ. C. 1895; re-en. Sec. 3646, Rev. C. 1907; re-en. Sec. 5739, R. C. M. 1921. Cal. Civ. C. Sec. 95.

Alimony

Where the husband is granted a divorce for the wife's wilful desertion, the court has no authority, under section 21-139, to allow the wife permanent alimony. *Albrecht v. Albrecht*, 83 M 37, 39, 269 P 158.

Allegations in Complaint

In complaint for divorce on grounds of desertion, there must be affirmatively stated the cessation of cohabitation and the intent to desert and also that the desertion continues for one year as required by section 21-117. *Hosking v. Hosking*, 120 M 437, 186 P 2d 503, 504.

Allowance of Attorney Fees to Wife

While under the provision of section 21-137, the district court has discretionary power in a divorce action to compel the husband, during the pendency of the action, upon a proper showing by the wife, to provide the means to enable her to prosecute or defend the action, its power in this regard as to allowance of counsel fees is limited to the time when the action is pending, subject to the exception that allowance for past services may be made upon a showing of its necessity in order to enable her to continue her prosecution or defense. *Albrecht v. Albrecht*, 83 M 37, 39, 269 P 158.

Complaint

Where complaint alleged that defendant since September 3rd, 1944, neglected plaintiff and suit was filed August 18, 1945, the complaint was insufficient to charge wilful neglect within the statute. *Shaw v. Shaw*, 122 M 593, 208 P 2d 514, 520.

Delay in Bringing Action

Where a delay of several years in bringing an action for divorce against a wife,

Single act as basis of divorce or separation on ground of cruelty. 24 ALR 918.

Charges in divorce suit of marital misconduct as cruelty within statute defining grounds of divorce. 51 ALR 1188.

Cruelty predicated upon acts or conduct during separation as ground for divorce or separation. 129 ALR 160.

Avoidance of procreation of children as ground for divorce and separation. 4 ALR 2d 235.

Revival of condoned cruelty or indignities for purpose of divorce or separation. 22 ALR 2d 155.

on the grounds of wilful desertion, extreme cruelty and habitual drunkenness, was caused by plaintiff's desire to support defendant during a period of two and one-half years deemed necessary to effect a cure of a venereal disease with which she was afflicted, it was not so "unreasonable" within the meaning of section 21-130, as to warrant dismissal of the action because of laches. *Ward v. Ward*, 81 M 587, 601, 264 P 667.

When Separation Is a Bar

This definition implies that the separation is without justification. Facts held sufficient justification for plaintiff's act in leaving without being guilty of wilful desertion. *Farwell v. Farwell*, 47 M 574, 581, 133 P 958.

While desertion may be cured before the expiration of the period which will make it a ground for divorce, by the return of the erring party soliciting condonation, where the wife was guilty of desertion by causing the husband to depart from the home because of cruelty on her part and threats of bodily harm and she made no advances for reconciliation, a consequent separation was not a voluntary one, such as thereafter to bar action for divorce on that ground. *Ward v. Ward*, 81 M 587, 601, 264 P 667.

References

Cited or applied as section 3646, Revised Codes, in *Decker v. Decker*, 56 M 338, 344, 185 P 168; *Putnam v. Putnam*, 86 M 135, 141, 282 P 855; *Clem v. Clem*, 97 M 570, 575, 36 P 2d 1034.

Collateral References

Divorce—37.

27 C.J.S. Divorce § 35.

17 Am. Jur. 193, Divorce and Separation, §§ 87-117.

Desertion as affected by remonstrance or resistance. 3 ALR 503.

Divorce or desertion predicated upon conduct subsequent to a decree of separation. 25 ALR 1047.

Refusal of one spouse to live with relatives of other as affecting desertion as ground of divorce or separation. 38 ALR 388.

21-108. (5740) Who commits desertion. Departure or absence of one party from the family dwelling-place, caused by cruelty or threats of bodily harm from which danger would be reasonably apprehended from the other, is not desertion by the absent party, but it is desertion by the other party.

History: En. Sec. 136, Civ. C. 1895; re-en. Sec. 3647, Rev. C. 1907; re-en. Sec. 5740, R. C. M. 1921. Cal. Civ. C. Sec. 98.

Operation and Effect

While desertion may be cured before the expiration of the period which will make it a ground for divorce, by the return of the erring party soliciting condonation, where the wife was guilty of desertion by causing the husband to depart from the home because of cruelty on her part and threats of bodily harm and she made no advances for reconciliation, a consequent separation was not a voluntary one, such as thereafter to bar action for divorce on that ground. Ward v. Ward, 81 M 587, 601, 264 P 667.

Held, that section 21-106, and this section, providing that departure or absence of one spouse from the family dwelling because of cruelty on the part of the other, shall constitute desertion by such other are in pari materia and must be construed together; that therefore the

Wife's failure to follow husband to new domicile as constituting desertion or abandonment as ground for divorce. 29 ALR 2d 474.

contention of defendant wife charged with desertion because of infliction of cruelty upon the husband by reason of which he was compelled to leave the family home, that the cruelty mentioned in this section means the infliction of personal violence and not the cruelty as defined by section 21-106, the infliction of grievous mental suffering, may not be sustained; in either event, the guilty party is the deserter. Putnam v. Putnam, 86 M 135, 141, 282 P 855.

References

Cited or applied as section 3647, Revised Codes, in Decker v. Decker, 56 M 338, 344, 185 P 168; Boggs v. Boggs, 119 M 540, 177 P 2d 869, 871.

Collateral References

Divorce⇒37(15, 16, 22).
27 C.J.S. Divorce §§ 35, 36.

Divorce: acts or omissions of spouse causing other spouse to leave home as desertion by former. 19 ALR 2d 1428.

21-109. (5741) Separation by consent not desertion. Separation by consent, with or without the understanding that one of the parties will apply for a divorce, is not desertion.

History: En. Sec. 137, Civ. C. 1895; re-en. Sec. 3648, Rev. C. 1907; re-en. Sec. 5741, R. C. M. 1921. Cal. Civ. C. Sec. 99.

Operation and Effect

Where an agreement of separation between husband and wife did not contain a covenant, express or implied, not to sue for divorce for past offenses, the existence of the agreement is not a bar to such an action. Ward v. Ward, 81 M 587, 601, 264 P 667.

References

Clem v. Clem, 97 M 570, 575, 36 P 2d 1034.

21-110. (5742) Separation and intent. Absence or separation, proper in itself, becomes desertion whenever the intent to desert is fixed during such absence or separation.

History: En. Sec. 138, Civ. C. 1895; re-en. Sec. 3649, Rev. C. 1907; re-en. Sec. 5742, R. C. M. 1921. Cal. Civ. C. Sec. 100.

Collateral References

Divorce⇒37(16, 17).
27 C.J.S. Divorce § 36.
17 Am. Jur. 198, Divorce and Separation, §§ 96-99.

Validity of separation agreement as affected by provision for post-mortem payment or performance. 1 ALR 2d 1264.

Written separation agreement as bar to divorce on ground of desertion. 34 ALR 2d 954.

Collateral References

Divorce⇒37 (19).
27 C.J.S. Divorce § 38.

21-111. (5743) Consent to separation revocable. Consent to a separation is a revocable act, and if one of the parties afterwards, in good faith, seeks a reconciliation and restoration, but the other refuses it, such refusal is desertion.

History: En. Sec. 139, Civ. C. 1895; re-en. Sec. 3650, Rev. C. 1907; re-en. Sec. 5743, R. C. M. 1921. Cal. Civ. Sec. 101.

Effect of Action for Divorce on Separation

In case of separation by consent, consent is not revoked by the fact that the husband fails to support his wife, when she does not complain, nor because he attempts to secure a divorce, where she is trying to do the same thing. *Bordeaux v. Bordeaux*, 43 M 102, 116, 115 P 25.

Effect of Conditional Offer of Reconciliation

While an offer of reconciliation, in order to be classed as one made in good faith, must be free from improper qualifications and conditions, one made by the husband coupled with the condition that the wife give up her attachment for one of her roomers may not be said to have been burdened with an improper condition. *Giebler v. Giebler*, 69 M 347, 350, 222 P 436.

Effect of Separation on Marital Status

A separation agreement does not change the legal status of husband and wife; they are still such, subject to certain duties and obligations which the law imposes upon the parties. *Giebler v. Giebler*, 69 M 347, 350, 222 P 436.

Offer of Reconciliation—Pleading

In pleading, whatever is necessarily implied in or reasonably to be inferred from an allegation must be taken as directly averred; and under that rule, an allegation in the cross-complaint of the wife, above referred to, that plaintiff husband had refused to maintain further marital relations with defendant, was equivalent to averring an offer to return, i. e., that she had sought reconciliation, which was refused, refusal in such circumstances constituting desertion on the part of the husband. *Clem v. Clem*, 97 M 570, 575, 36 P 2d 1034.

Refusal of Offer of Reconciliation Is Desertion

Where a separation has once been established by mutual agreement, express or implied, it will be presumed to continue until one of the parties revokes consent and in good faith seeks reconciliation and restoration; whereupon the party rejecting the overtures thus made is guilty of desertion. *Bordeaux v. Bordeaux*, 43 M 102, 110, 115 P 25.

The theory of this section is that, where both parties have consented, neither can allege that the act of the other is wrongful, until consent has been revoked, though each may at the time of the separation have intended to abandon the other. *Bordeaux v. Bordeaux*, 43 M 102, 110, 115 P 25; citing upon this point *Benkert v. Benkert*, 32 Cal. 468; *Herold v. Herold*, 47 N. J. Eq. 210, 20 Atl. 375, 9 L. R. A. 696.

Where the parties in an action for divorce on the ground of desertion had lived apart for some years, evidence showing that the separation had been by mutual consent, that an offer of reconciliation made by the plaintiff husband was made in good faith, and that defendant capriciously rejected it, was sufficient under this section to make out a case of desertion on the part of the wife, and to entitle plaintiff to the relief demanded. *Bordeaux v. Bordeaux*, 43 M 102, 118, 115 P 25.

Where husband and wife were living apart under a separation agreement, an offer of reconciliation made by the husband was not open to the charge that it was not made in good faith in the absence of a showing that at the time it was made he had secured and furnished a home for himself and wife, the statute not imposing such a burden, and section 21-113, providing that it is the privilege of the husband to choose any reasonable place of abode or mode of living, and if the wife does not conform thereto it is desertion. *Giebler v. Giebler*, 69 M 347, 350, 222 P 436.

Where Revocation Ineffectual

Where a separation of husband and wife was made by mutual consent, alleged revocation of the agreement by the husband by means of a letter, held, of no avail as evidence of desertion on the part of the wife, the time elapsing between the writing of the letter and the commencement of his action for divorce having been insufficient. *Herrin v. Herrin*, 103 M 469, 474, 63 P 2d 137.

Collateral References

Divorce §37(7, 16, 19).
27 C.J.S. *Divorce* §§ 36, 38.

Validity of separation agreement as affected by provision for post-mortem payment or performance. 1 ALR 2d 1264.

21-112. (5744) Desertion—how cured. If one party deserts the other, and before the expiration of the statutory period required to make the desertion a cause of divorce, returns and offers in good faith to fulfil the marriage contract, and solicits condonation, the desertion is cured. If the other party refuse such offer and condonation, the refusal shall be deemed and treated as desertion by such party from the time of refusal.

History: En. Sec. 140, Civ. C. 1895; re-en. Sec. 3651, Rev. C. 1907; re-en. Sec. 5744, R. C. M. 1921. Cal. Civ. C. Sec. 102.

v. Docotovich, 125 M 56, 229 P 2d 971, 975.

References

Ward v. Ward, 81 M 587, 601, 264 P 667; Damm v. Damm, 82 M 239, 247, 266 P 410; Goodwin v. Elm Orlu Min. Co. et al., 83 M 152, 160, 269 P 403.

Collateral References

Divorce—37 (8, 19).
27 C.J.S. Divorce § 38.

Offer, after lapse of statutory period of desertion, to resume marital relations. 18 ALR 630.

21-113. (5745) Husband may select home. The husband may choose any reasonable place or mode of living, and if the wife does not conform thereto, it is desertion.

History: En. Sec. 141, Civ. C. 1895; re-en. Sec. 3652, Rev. C. 1907; re-en. Sec. 5745, R. C. M. 1921. Cal. Civ. C. Sec. 103.

Operation and Effect

The husband is ordinarily the head of the family, and has the right to select the home, but he loses such right where he abandons his wife. *Mennell v. Wells*, 51 M 141, 148, 149 P 954.

Where husband and wife were living apart under a separation agreement, an offer of reconciliation made by the husband was not open to the charge that it was not made in good faith in the absence of a showing that at the time it was made he had secured and furnished a home for himself and wife, the statute not imposing such burden, and this section providing that it is the privilege of the husband to choose any reasonable place of abode or mode of living, and if the wife does not conform thereto it is desertion. *Giebler v. Giebler*, 69 M 347, 222 P 436.

Where a husband having a home in this state removed temporarily to a city in another state and on returning to his home in Montana with intention of remaining there, requested the wife to accompany him but met with the declaration that she would never again go there, such refusal constituted desertion on her part, in the absence of proof that the home was not

a fit place in which to live or that her refusal to return was the result of his inability to pay for her transportation. *Damm v. Damm*, 82 M 239, 247, 266 P 410.

A mere showing that parties are married may raise a presumption that the wife is legally entitled to be supported by the husband, but where the evidence showed that at the time the husband was injured in the course of his employment she was and had been for four years living apart from him and had refused to return to the home provided by him because he declined to also receive as a member of the household her son by a former marriage who was capable of caring for himself, which the husband was not required to do under section 61-117, her refusal was unreasonable and constituted desertion on her part. *Goodwin v. Elm Orlu Min. Co. et al.*, 83 M 152, 160, 269 P 403.

References

Boggs v. Boggs, 119 M 540, 177 P 2d 869, 871.

Collateral References

Divorce—37 (21); Husband and Wife—3 (1).
27 C.J.S. Divorce § 36; 41 C.J.S. Husband and Wife § 10.

21-114. (5746) If place unfit, desertion on part of husband. If the place or mode of living selected by the husband is unreasonable and grossly unfit, and the wife does not conform thereto, it is desertion on the part of

the husband from the time her reasonable objections are made known to him.

History: En. Sec. 142, Civ. C. 1895; re-en. Sec. 3653, Rev. C. 1907; re-en. Sec. 5746, R. C. M. 1921. Cal. Civ. C. Sec. 104.

Operation and Effect

Complaint in an action for separate maintenance held sufficient to state a

cause of action under this section. Decker v. Decker, 56 M 338, 185 P 168.

References

Goodwin v. Elm Orlu Min. Co. et al., 83 M 152, 160, 269 P 403.

21-115. (5747) Wilful neglect, what constitutes. Wilful neglect is the neglect of the husband to provide for his wife the common necessities of life, he having the ability to do so; or it is the failure to do so by reason of idleness, profligacy, or dissipation.

History: En. Sec. 143, Civ. C. 1895; re-en. Sec. 3654, Rev. C. 1907; re-en. Sec. 5747, R. C. M. 1921. Cal. Civ. C. Sec. 105.

References

Cited or applied as section 3654, Revised Codes, in Farwell v. Farwell, 47 M 574, 580, 133 P 958; State ex rel. La Point v. District Court, 69 M 29, 31, 220 P 88.

Collateral References

Divorce⇒32.
27 C.J.S. Divorce § 40.
17 Am. Jur. 229, Divorce and Separation, §§ 153-157.

21-116. (5748) Habitual intemperance, what constitutes. Habitual intemperance is that degree of intemperance from the use of intoxicating drinks which disqualifies the person a great portion of the time from properly attending to business.

History: En. Sec. 144, Civ. C. 1895; re-en. Sec. 3655, Rev. C. 1907; re-en. Sec. 5748, R. C. M. 1921. Cal. Civ. C. Sec. 106.

Collateral References

Divorce⇒22.
27 C.J.S. Divorce § 48.
17 Am. Jur. 219, Divorce and Separation, §§ 133-139.

Necessity of continuance of drunkenness until commencement of suit or later. 54 ALR 331.

What amounts to habitual intemperance, drunkenness, etc., within statute relating to substantive ground for divorce. 120 ALR 1176.

21-117. (5749) Desertion, neglect or habitual intemperance for one year. Wilful desertion, wilful neglect, or habitual intemperance must continue for the space of one year before there is a ground for divorce.

History: En. Sec. 145, Civ. C. 1895; re-en. Sec. 3656, Rev. C. 1907; re-en. Sec. 5749, R. C. M. 1921. Cal. Civ. C. Sec. 107.

Complaint

Complaint charging desertion must be sufficiently informative as to matter of time and place of desertion as to reasonably inform the defendant of the charge. Hosking v. Hosking, 120 M 437, 186 P 2d 503, 504.

In complaint for divorce on grounds of desertion, there must be affirmatively shown the cessation of cohabitation and the intent to desert as well as that the desertion continued for a period of one year. Hosking v. Hosking, 120 M 437, 186 P 2d 503, 504.

Where complaint alleged that defendant since September 3rd, 1944, neglected plaintiff and suit was filed August 18, 1945,

the complaint was insufficient to charge wilful neglect within the statute. Shaw v. Shaw, 122 M 593, 208 P 2d 514, 520.

Operation and Effect

This section has no application to an action for separate maintenance on the ground of wilful desertion. Decker v. Decker, 56 M 338, 185 P 168.

Desertion does not constitute a ground for divorce unless it has continued for one year (this section). The court in granting plaintiff husband a decree on that ground because of defendant's conduct causing him to leave the home on account of cruelty on her part, found that the evidence was just as strong that he left more than a year before the action was begun as that he left seven months later than the date alleged, as contended by defendant. Held; that, according to the

finding, the evidence was evenly balanced or in equilibrium on this vital issue; hence plaintiff did not sustain the burden of proof by a preponderance of the evidence, and decree in his favor was error. Putnam v. Putnam, 86 M 135, 141, 282 P 855.

References

Cited or applied as section 3656, Revised Codes, in State ex rel. Cotter v. District

21-118. (5750) Divorces denied, on showing what. Divorces must be denied upon showing:

1. Connivance;
2. Collusion;
3. Condonation;
4. Recrimination.

History: En. Sec. 160, Civ. C. 1895; re-en. Sec. 3658, Rev. C. 1907; re-en. Sec. 5750, R. C. M. 1921. Cal. Civ. C. Sec. 111.

References

Cited or applied as section 160, Civil Code, in Bordeaux v. Bordeaux, 30 M 36, 42, 75 P 524; Bordeaux v. Bordeaux, 32 M 159, 165, 80 P 6; as section 3658, Revised Codes, in State ex rel. Cotter v. District Court, 49 M 146, 150, 140 P 732; Cooper v. Cooper, 92 M 57, 65, 10 P 2d 939.

21-119. (5751) Connivance, what constitutes. Connivance is the corrupt consent of one party to the commission of the acts of the other, constituting the cause of divorce.

History: En. Sec. 161, Civ. C. 1895; re-en. Sec. 3659, Rev. C. 1907; re-en. Sec. 5751, R. C. M. 1921. Cal. Civ. C. Sec. 112.

Operation and Effect

Connivance is little less than a crime generally, and may constitute a crime under certain circumstances. The fact that the plaintiff, suspecting his wife of adultery, laid a trap and caught her flagrante delicto, thereby securing evidence to be used by him in his divorce proceeding, is not sufficient to charge him with connivance so long as he was not in any respect responsible for her adulterous act. Farwell v. Farwell, 47 M 574, 578, 133 P 958.

Where in an action for divorce against the husband on the ground of cruelty the latter by cross-complaint charged the wife

Court, 49 M 146, 150, 140 P 732; Crenshaw v. Crenshaw, 120 M 190, 182 P 2d 477, 483.

Collateral References

Divorce⇒22, 32, 37(5).
27 C.J.S. Divorce §§ 37, 40, 48.

Collateral References

Divorce⇒38½, 45-56.
27 C.J.S. Divorce §§ 56, 59-62, 63, 64, 65, 66, 67.
17 Am. Jur. 236, Divorce and Separation, §§ 172-240.

Antenuptial knowledge relating to alleged grounds as barring right to divorce. 15 ALR 2d 670.

Recrimination as defense to divorce sought on ground of incompatibility. 21 ALR 2d 1267.

with desertion, the fact that he during the wife's absence from his home before commencement of the action made regular monthly payments to her, as well as some after its commencement, for her support did not preclude him from contending that she was a deserter, nor amount to a "corrupt consent" to her acts of desertion within the meaning of this section, defining "connivance," which, under the preceding section, bars divorce. Cooper v. Cooper, 92 M 57, 65, 10 P 2d 939.

Collateral References

Divorce⇒45.
27 C.J.S. Divorce § 64.
17 Am. Jur. 262, Divorce and Separation, §§ 220-225.

What amounts to connivance by one spouse at other's adultery. 17 ALR 2d 342.

21-120. (5752) Collusion, what constitutes. Collusion is an agreement between husband and wife that one of them shall commit, or appear to have committed, or to be falsely represented in court as having committed, acts constituting a cause of divorce for the purpose of enabling the other to obtain a divorce.

History: Earlier statutes relative to collusion were section 4, p. 430, Bannack

Statutes; re-enacted as section 4, p. 458, Codified Statutes 1871; re-enacted as sec-

tion 570, Fifth Division Revised Statutes 1879; re-enacted as section 1002, Fifth Division Compiled Statutes 1887.

This section en. Sec. 162, Civ. C. 1895; re-en. Sec. 3660, Rev. C. 1907; re-en. Sec. 5752, R. C. M. 1921. Cal. Civ. C. Sec. 114.

References

In re Huppe, 92 M 211, 218, 11 P 2d 793.

21-121. (5753) Condonation, what constitutes. Condonation is the conditional forgiveness of a matrimonial offense constituting a cause of divorce.

History: En. Sec. 163, Civ. C. 1895; re-en. Sec. 3661, Rev. C. 1907; re-en. Sec. 5753, R. C. M. 1921. Cal. Civ. C. Sec. 115.

References

Bickford v. Bickford, 94 M 314, 319, 22 P 2d 306; Docotovich v. Docotovich, 125 M 56, 229 P 2d 971, 975.

Collateral References

Divorce \Rightarrow 48.
27 C.J.S. Divorce § 59.

Collateral References

Divorce \Rightarrow 56.
27 C.J.S. Divorce § 65.
17 Am. Jur. 243, Divorce and Separation, §§ 186-194.

Collusion as bar to divorce. 28 ALR 699.

17 Am. Jur. 248, Divorce and Separation, §§ 195-219.

Condonation of cruel treatment as defense in divorce action. 98 ALR 1354.

Antenuptial knowledge relating to alleged grounds as barring right to divorce. 15 ALR 2d 670.

Revival of condoned cruelty or indignities for purpose of divorce or separation. 32 ALR 2d 155.

21-122. (5754) Requisites to condonation. The following requirements are necessary to condonation:

1. A knowledge on the part of the injured party of the facts constituting the cause of divorce.
2. Reconciliation and remission of the offense by the injured party.
3. Restoration of the offending party to all marital rights.

History: En. Sec. 164, Civ. C. 1895; re-en. Sec. 3662, Rev. C. 1907; re-en. Sec. 5754, R. C. M. 1921. Cal. Civ. C. Sec. 116.

References

Cited or applied as section 164, Civil Code, in Bordeaux v Bordeaux, 30 M 36, 43, 75 P 524; Docotovich v. Docotovich, 125 M 56, 229 P 2d 971, 975.

Collateral References

Divorce \Rightarrow 49.
27 C.J.S. Divorce § 60 et seq.
17 Am. Jur. 252, Divorce and Separation, §§ 204-207.

21-123. (5755) Condonation implies what. Condonation implies a condition subsequent, that the forgiving party must be treated with conjugal kindness.

History: En. Sec. 165, Civ. C. 1895; re-en. Sec. 3663, Rev. C. 1907; re-en. Sec. 5755, R. C. M. 1921. Cal. Civ. C. Sec. 117.

References

Bickford v. Bickford, 94 M 314, 319, 22 P 2d 306; Docotovich v. Docotovich, 125 M 56, 229 P 2d 971, 975.

Collateral References

Divorce \Rightarrow 50, 51.
27 C.J.S. Divorce §§ 59, 62.

Antenuptial knowledge relating to alleged grounds as barring right to divorce. 15 ALR 2d 670.

21-124. (5756) Evidence of condonation. Where the cause of divorce consists of a course of offensive conduct, or arises, in cases of cruelty, from successive acts of ill-treatment, which may, aggregately, constitute the offense, cohabitation, or passive endurance, or conjugal kindness, shall not be evidence of condonation of any of the acts constituting such cause, unless accompanied by an express agreement to condone.

History: En. Sec. 166, Civ. C. 1895; re-en. Sec. 3664, Rev. C. 1907; re-en. Sec. 5756, R. C. M. 1921. Cal. Civ. C. Sec. 118.

Operation and Effect

Where an agreement of separation between husband and wife did not contain a covenant, express or implied, not to sue for divorce for past offenses, the existence of the agreement is not a bar to such an action. Ward v. Ward, 81 M 587, 600, 264 P 667.

21-125. (5757) When condonation can only be made. In cases mentioned in the last section, condonation can be made only after the cause of divorce has become complete, as to the acts complained of.

History: En. Sec. 167, Civ. C. 1895; re-en. Sec. 3665, Rev. C. 1907; re-en. Sec. 5757, R. C. M. 1921. Cal. Civ. C. Sec. 119.

References

Bickford v. Bickford, 94 M 314, 319, 22 P 2d 306.

Collateral References

Divorce 49, 135.
27 C.J.S. Divorce §§ 60 et seq., 144.
17 Am. Jur. 349, Divorce and Separation, §§ 409-414.

21-126. (5758) Concealment of facts in certain cases makes condonation void. A fraudulent concealment by the offending party of facts constituting a different cause of divorce from the one condoned, and existing at the time of condonation, avoids such condonation.

History: En. Sec. 168, Civ. C. 1895; re-en. Sec. 3666, Rev. C. 1907; re-en. Sec. 5758, R. C. M. 1921. Cal. Civ. C. Sec. 120.

Collateral References

Divorce 49.
27 C.J.S. Divorce § 60 et seq.

21-127. (5759) Condonation—how revoked. Condonation is revoked, and the original cause of divorce revived:

1. When the offending party commits acts constituting a like or other cause of divorce; or,
2. When the offending party is guilty of great conjugal unkindness, not amounting to a cause of divorce, but sufficiently habitual and gross to show that the conditions of condonation had not been accepted in good faith, or not fulfilled.

History: En. Sec. 169, Civ. C. 1895; re-en. Sec. 3667, Rev. C. 1907; re-en. Sec. 5759, R. C. M. 1921. Cal. Civ. C. Sec. 121.

Operation and Effect

Where, in an action for divorce, defendant wife interposed the defense of condonation and a resumption of marital relations, but the record disclosed much quarreling and other acts of conjugal unkindness thereafter, sufficient to show that the conditions of condonation were not ac-

cepted by her in good faith nor fulfilled, it was revoked under this section, and the court did not err in admitting evidence of acts of cruelty committed prior to the date of the alleged condonation. Bickford v. Bickford, 94 M 314, 319, 22 P 2d 306.

Collateral References

Divorce 51.
27 C.J.S. Divorce § 62.
Revival of condoned adultery. 16 ALR 2d 585.

21-128. (5760) Recrimination, what constitutes. Recrimination is a showing by the defendant of any cause of divorce against the plaintiff, in bar of the plaintiff's cause of divorce.

History: En. Sec. 170, Civ. C. 1895; re-en. Sec. 3668, Rev. C. 1907; re-en. Sec. 5760, R. C. M. 1921. Cal. Civ. C. Sec. 122.

References

Cited or applied as section 170, Civil Code, in Bordeaux v. Bordeaux, 30 M 36, 43, 75 P 524.

Collateral References

Divorce 53-55.
27 C.J.S. Divorce § 67.
17 Am. Jur. 267, Divorce and Separation, §§ 233-240.

21-129. (5761) Condonation in a recriminatory defense—when a bar to defense. When a cause of divorce is set up in the answer as a recriminatory defense, the condonation thereof is a bar to such defense unless:

1. The condonation be revoked as provided in section 21-127; or,
2. Two years have elapsed after the condonation and before the accruing or completion of the cause of action alleged in the complaint.

History: En. Sec. 171, Civ. C. 1895; re-en. Sec. 3669, Rev. C. 1907; re-en. Sec. 5761, R. C. M. 1921. Cal. Civ. C. Sec. 123.

Collateral References

Divorcee \hookrightarrow 54, 55.
27 C.J.S. Divorce § 67.

21-130. (5762) Divorce—when denied. A divorce must be denied:

1. When the cause is adultery, and the action is not commenced within two years after its discovery by the injured party; or,
2. When the cause is conviction of felony, and the action is not commenced before the expiration of two years after final judgment and sentence;
3. In all other cases where there is an unreasonable lapse of time before the commencement of the action.

History: En. Sec. 172, Civ. C. 1895; re-en. Sec. 3670, Rev. C. 1907; re-en. Sec. 5762, R. C. M. 1921. Cal. Civ. C. Sec. 124.

Operation and Effect

Where the complaint in an action for divorce, asked for on the ground that defendant had been convicted of a felony, showed that two years had elapsed since conviction, and, in the absence of any excuse for the delay in bringing suit, the court, notwithstanding defendant's default, properly denied the divorce on its own motion by virtue of the provisions of this section. *Franklin v. Franklin*, 40 M 348, 350, 352, 106 P 353.

Id. The language of this section is no more imperative than is that of section 21-134. Both declare that "a divorce must be denied," in the one case if the action is not brought within two years after final judgment and sentence, and in the other if the plaintiff has not been a resident of the state for the required time. It would seem inconsistent to hold that in the latter case, on grounds of public policy, the fact must be alleged and proved, and that in the former it is a matter of no concern, except to the parties, when the action is brought.

The "unreasonable lapse of time" in bringing an action for divorce on certain grounds, which under this section bars it, is such delay in commencing suit as establishes the presumption that there has been connivance, collusion or condonation of the offense, with intent to continue the marriage relation notwithstanding the offense, but such presumption may be rebutted by showing reasonable grounds for the delay. *Ward v. Ward*, 81 M 587, 602, 264 P 667.

Id. Where a delay of several years in bringing an action for divorce against the wife, on the grounds of wilful desertion, extreme cruelty and habitual drunkenness, was caused by plaintiff's desire to support defendant during a period of two and one-half years deemed necessary to effect a cure of a venereal disease with which she was afflicted, it was not so "unreasonable" within the meaning of this section as to warrant dismissal of the action because of laches.

Collateral References

Divorcee \hookrightarrow 66½, 68.
27 C.J.S. Divorce, §§ 86, 88.
17 Am. Jur. 237, Divorce and Separation, § 173.

21-131. (5763) Lapse of time establishes certain presumptions. Unreasonable lapse of time is such a delay in commencing the action as establishes the presumption that there has been connivance, collusion, or condonation of the offense, or full acquiescence in the same, with intent to continue the marriage relation, notwithstanding the commission of such offense.

History: En. Sec. 173, Civ. C. 1895; re-en. Sec. 3671, Rev. C. 1907; re-en. Sec. 5763, R. C. M. 1921. Cal. Civ. C. Sec. 125.

References

Ward v. Ward, 81 M 587, 603, 264 P 667.

Collateral References

Divorce⊃66½, 109.

27 C.J.S. Divorce §§ 86, 123.

21-132. (5764) Presumptions may be rebutted. The presumptions arising from lapse of time may be rebutted by showing reasonable grounds for the delay in commencing the action.

History: En. Sec. 174, Civ. C. 1895; re-en. Sec. 3672, Rev. C. 1907; re-en. Sec. 5764, R. C. M. 1921. Cal. Civ. C. Sec. 126.

Collateral References

Divorce⊃109.
27 C.J.S. Divorce § 123.

References

Ward v. Ward, 81 M 587, 603, 264 P 667.

21-133. (5765) Limitation of time. There are no limitations of time for commencing actions for divorce, except such as are contained in section 21-130.

History: En. Sec. 175, Civ. C. 1895; re-en. Sec. 3673, Rev. C. 1907; re-en. Sec. 5765, R. C. M. 1921. Cal. Civ. C. Sec. 127.

Court, 49 M 146, 150, 140 P 732; Ward v. Ward, 81 M 587, 602, 264 P 667.

Collateral References

Divorce⊃67.
27 C.J.S. Divorce § 88.

References

Cited or applied as section 3673, Revised Codes, in State ex rel. Cotter v. District

21-134. (5766) Period of residence required to entitle plaintiff to divorce. A divorce must not be granted unless the plaintiff has been a resident of the state for one year next preceding the commencement of the action.

History: En. Sec. 176, Civ. C. 1895; re-en. Sec. 3674, Rev. C. 1907; re-en. Sec. 5766, R. C. M. 1921. Cal. Civ. C. Sec. 128.

"Citizenship" and "Residence" Not Convertible Terms

"Citizenship" and "residence" are not convertible terms; citizenship implies much more than residence and carries the idea of connection or identification with the state and participation in its functions; it applies to a person possessing social and political rights, and sustaining social, political and moral obligations; an allegation of residence in a state does not mean citizenship therein. One not a citizen of the United States may become a resident within the meaning of the divorce statutes, and may invoke the jurisdiction of the state courts in a divorce proceeding. State ex rel. Duckworth v. District Court, 107 M 97, 101, 80 P 2d 367.

Operation and Effect

The fact that plaintiff in a suit for divorce has been a resident of the state for the statutory period of one year next preceding the commencement of the suit must be alleged in the complaint in order to confer jurisdiction of the cause upon the trial court. Rumping v. Rumping, 36 M 39, 40, 91 P 1057; Eadie v. Eadie, 44 M 391, 394, 120 P 239. See Franklin v. Franklin, 40 M 348, 351, 106 P 353. See also Clark v. Clark, 64 M 386, 392, 210 P 93; Cooper v. Cooper, 92 M 57, 10 P 2d 939.

In divorce proceedings district courts should, under the mandate of this section, ex-officio inquire into the fact of plaintiff's residence—jurisdictional in its nature—and be governed accordingly. Rumping v. Rumping, 36 M 39, 43, 91 P 1057. See Franklin v. Franklin, 40 M 348, 351, 106 P 353.

The language of this section is imperative. Franklin v. Franklin, 40 M 348, 352, 106 P 353.

Residence is Changed by Removal Joined With Intent

Where both plaintiff and defendant removed to California but returned to Montana some four or five years later, and testified that they never intended to abandon their legal residence in Montana, trial court's finding that their removal was with the intention of making permanent residence in California was error. Herrin v. Herrin, 103 M 469, 472, 63 P 2d 137.

"Residence" Synonymous with "Domicile"

Where statutes refer only to residence and not to domicile, as does this section, the courts have generally held that the word "residence" will be construed to mean practically the same as "domicile." The legislature in enacting section 83-303, and defining the term "residence" has adopted the same rule. State ex rel. Duckworth v. District Court, 107 M 97, 101, 80 P 2d 367.

Id. The "domicile" of a person within the rule that courts have generally held the word "residence" to mean practically the same as "domicile" under laws referring only to residence and not to domicile as does this section, is one's voluntarily fixed habitation, not for a mere temporary or special purpose, but with a present intention of making it his home until something uncertain and unexpected happens to induce him to adopt some other permanent home; place of lodging being a weightier criterion of domicile than the place of business.

Where Citizen of Canada Entitled to Maintain Suit

Held, under the rules relating to domicile and residence, that where plaintiff in a divorce action was a citizen of the Dominion of Canada and employed in its customs service on the boundary line between the United States and Canada at a place where there were no living quarters, necessitating his seeking quarters in a nearby Montana town to which he returned each night, he was a resident of this state within the meaning of the divorce statute. *State ex rel. Duckworth v. District Court*, 107 M 97, 102, 80 P 2d 367.

21-135. (5767) Divorce not granted by default alone, etc. No divorce can be granted upon the default of the defendant alone, but the cause must be heard in open court, and the court must require proof of all the facts alleged.

History: En. Sec. 177, Civ. C. 1895; re-en. Sec. 3675, Rev. C. 1907; re-en. Sec. 5767, R. C. M. 1921. Cal. Civ. C. Sec. 130.

References

Cited or applied as section 3675, Revised Codes, in *State ex rel. Cotter v. District Court*, 49 M 146, 150, 140 P 732; *Clark v. Clark*, 64 M 386, 393, 210 P 93.

21-136. (5768) Relief may be adjudged, when divorce is denied. Though judgment of divorce is denied, the court may, in its discretion, in an action for divorce, provide for the maintenance of the wife and her children, or any of them, by the husband.

History: En. Sec. 190, Civ. C. 1895; re-en. Sec. 3676, Rev. C. 1907; re-en. Sec. 5768, R. C. M. 1921. Cal. Civ. C. Sec. 136.

Operation and Effect

Under this section, providing that the district court may, in an action for divorce, make provision for the maintenance of the wife even though a decree of divorce is denied, held that the court did not abuse its discretion in an action instituted by the wife, in adjudging that while grounds for a divorce did not exist, in view of the apparent impossibility of the

References

Cited or applied in *In re Anderson's Estate*, 121 M 515, 194 P 2d 621, 622.

Collateral References

Divorce \Rightarrow 62, 64.

27 C.J.S. Divorce § 75.

17 Am. Jur. 277, Divorce and Separation, §§ 248-266.

Separate domicil of wife for purposes of jurisdiction over suit by her for divorce or separation. 39 ALR 710.

Jurisdiction of courts of state of which neither party is a resident over suit between husband and wife for alimony or division of property rights without divorce. 74 ALR 1242.

Nonresidence of defendant or cross complainant in a suit for divorce as affecting power to grant divorce in his or her favor. 89 ALR 1203.

What constitutes residence or domicil within state for purpose of jurisdiction in divorce. 106 ALR 6.

Residence or domicil, for purpose of divorce action, of one in armed forces. 21 ALR 2d 1163.

Collateral References

Divorce \Rightarrow 109, 146, 160.

27 C.J.S. Divorce §§ 123, 148, 164.

Power of court, in absence of express authority, to grant relief from judgment by default in divorce action. 22 ALR 2d 1312.

parties to live together, the husband should, for a period of two years, pay the wife \$50 every three months for her support, she then being 47 years of age, and it appearing that all the property of the parties in the accumulation of which the wife had materially aided, was in the husband's name. *Carboni v. Carboni*, 99 M 279, 282, 43 P 2d 634.

Id. While the codes do not in terms authorize a divorce a mensa et thoro,—from bed and board,—in effect a limited or partial divorce, the effect of this section is much akin to such a divorce.

References

State ex rel. La Point v. District Court, 69 M 29, 36 et seq., 220 P 88; State ex rel. Lay v. District Court, 122 M 61, 198 P 2d 761, 767.

Collateral References

Divorce 154, 231, 232.
27 C.J.S. Divorce §§ 159, 203, 229.

21-137. (5769) Expenses of action—alimony. While an action for divorce is pending the court or judge may, in its or his discretion, require the husband to pay as alimony any money necessary to enable the wife to support herself or her children, or to prosecute or defend the action. When the husband wilfully deserts the wife, she may, without applying for a divorce, maintain in the district court an action against him for permanent support and maintenance of herself or of herself and children. During the pendency of such action, the court or judge may, in its or his discretion, require the husband to pay as alimony any money necessary for the prosecution of the action and for support and maintenance, and executions may issue therefor in the discretion of the court or judge. The final judgment in such action may be enforced by the court by such order or orders as in its discretion it may from time to time deem necessary, and such order or orders may be varied, altered, or revoked at the discretion of the court.

History: Ap. p. Sec. 6, p. 431, Bannack Stat.; re-en. Sec. 6, p. 458, Cod. Stat. 1871; re-en. Sec. 512, 5th Div. Rev. Stat. 1879; re-en. Sec. 1004, 5th Div. Comp. Stat. 1887; amd. Sec. 191, Civ. C. 1895; re-en. Sec. 3677, Rev. C. 1907; re-en. Sec. 5769, R. C. M. 1921. Cal. Civ. C. Sec. 137. Based On Field Civ. C. Sec. 71.

Action to Enforce Foreign Decree for Monthly Alimony

In an action to enforce payment of alimony awarded to plaintiff wife by a judgment rendered by a court in the state of Washington, held, that although the decree was not final in the sense contemplated by the full faith and credit clause of the Federal Constitution, sec. 1, art. IV, the clause under the principles of comity could be applied where judgment for accrued payments was sought; held also that the evidence did not support the conclusion that by agreement and acquiescence the parties made any reduction, as mere acceptance by wife of less where amount is fixed by judgment could not discharge the husband's obligation. *Espeland v. Espeland*, 111 M 365, 368, 109 P 2d 792.

Alimony How Determined

In awarding alimony upon final decree of divorce, the amount which the wife should receive is not a certain proportion of the husband's estate, but is to be determined by the equities of the case and the financial condition of the parties. *Cummins v. Cummins*, 59 M 225, 229, 195 P 1031.

Id. Where the court in a divorce proceeding awarded the wife practically all the estate of the husband readily conver-

tible into cash to the amount of about \$9,000, leaving to him property consisting of a ranch and real estate, some of which was unproductive, valued at \$26,000, the decree held not open to the objection that the court had not fairly and reasonably exercised its discretion because of its refusal to increase the amount so as to make the award equal one-third of the husband's estate.

In a proceeding for separate maintenance or divorce in which suit money, counsel fees or alimony are demanded, the wealth of the defendant husband is directly involved, since upon it depends the amount which the court in its discretion may allow for either purpose; hence the trial court did not err in permitting attorneys to give testimony, as to the value of the services rendered by plaintiff's attorney, taking into consideration the wealth of the defendant. *Walker v. Hill*, 90 M 111, 121, 300 P 260.

Alimony May Be Reduced on Inability to Pay

Where a petition of the husband to modify a separate maintenance decree, and contempt proceeding based on his failure to pay were heard together, evidence was in sharp conflict on ability of contemnor to obey the court's order but evidence was substantial that he was then and had been for some time past financially unable to meet the installments fixed by the original decree, the supreme court on appeal may not say that the court abused its discretion in reducing the monthly award from \$150 to \$50, nor erred in failing to find him guilty of contempt. *Woehler v. Woehler*, 107 M 69, 74, 81 P 2d 344.

Alimony Pending Appeal

The supreme court has no power to allow temporary alimony or suit money pending an appeal in a divorce case. *Bordeaux v. Bordeaux*, 26 M 533, 535, 539, 69 P 103. See *Finlen v. Heinze*, 27 M 107, 118, 69 P 829, 70 P 517; *Bordeaux v. Bordeaux*, 29 M 478, 482, 75 P 359; *State ex rel. Tong v. District Court*, 109 M 418, 422, 96 P 2d 918.

Allows Modification of Past and Future Installments of Alimony

This section, declaring that the final judgment in a separate maintenance action may by its orders be enforced by the district court as it may in its discretion, from time to time deem necessary, held broad enough to include within its terms not only future but also past due installments of alimony, contrary to the general rule that installments already accrued constitute a vested right not alterable by the court. *Woehler v. Woehler*, 107 M 69, 72, 73, 81 P 2d 344.

Attorney's Fee Contingent Upon Alimony Void

A contract between an attorney and plaintiff in a suit for divorce, providing for an attorney's fee contingent upon the amount of alimony recovered, is void as against public policy. *Coleman v. Sisson*, 71 M 435, 445, 230 P 582.

Attorney's Fees

This section is broad enough to warrant the court in awarding to plaintiff expenses with which to prosecute the proceeding seeking a modification of the award of custody of a minor child, even though divorce has been granted. *McDonald v. McDonald*, 124 M 26, 218 P 2d 929, 932, 15 ALR 2d 1260.

Effect of Judgment of Separate Maintenance

A judgment of separate maintenance does not alter the marital status except to give legal sanction to wife's living apart from her husband and it cannot validly effect a division of the property, determine property rights, or change the course of inheritance. *Boggs v. Boggs*, 119 M 540, 177 P 2d 869, 872.

Enforcement of Orders

There are various ways of enforcing orders directing the payment of support money in actions for divorce, the most common of which are requiring the husband to give security under section 21-140, by contempt proceedings, by execution as in the case of other money judgments, or by invoking the police power to punish the parent for wilfully failing, refusing or neglecting to support under section

10-511. *State ex rel. Lay v. District Court*, 122 M 61, 198 P 2d 761, 767.

Expenses of Action

The district court has no power, after trial and judgment for the husband, to compel the husband to pay for past services of attorneys, or expenses of the trial, except when such payment is necessary to enable the wife to continue her defense, or prepare and present a motion for a new trial or an appeal. *Bordeaux v. Bordeaux*, 29 M 478, 483, 75 P 359. See also *Albrecht v. Albrecht*, 83 M 37, 46, 269 P 158.

Defendant in an action for divorce was not bound to show affirmatively, on her application to have plaintiff pay into court money sufficient to defray costs already incurred, and those to be incurred in presenting her motion for a new trial, that the application was made in good faith and that there was a probability of her ultimate success in the litigation, before the court could properly act upon it. *Rumping v. Rumping*, 41 M 33, 36, 108 P 10.

Id. In an action for divorce, where the wife moves for suit money, she must show a necessity for the allowance asked; if she has sufficient means of her own to meet the costs of suit, the application should be denied.

Id. The rules governing allowances for suit money and expenses of litigation are the same as those which apply to allowances made for temporary alimony.

Id. It was error to allow the wife a larger amount of suit money, in an action for divorce, than the testimony showed was necessary for the purpose to which it was to be applied.

In an action for the annulment of marriage on the ground of defendant wife's physical incapacity, there is no statutory authority for allowing her alimony pendente lite, attorney's fees and suit money. The court may, however, under its equity jurisdiction, in such a case grant the aforesaid allowances. *State ex rel. Wooten v. District Court*, 57 M 517, 189 P 233.

An action against the husband for legal services rendered the wife in instituting divorce proceedings, which were dismissed by her soon after their commencement, did not lie under this section, which provides that while a divorce action is pending the court or judge may require the husband to pay suit money to enable the wife to prosecute (or defend) the action, the power thus conferred being exclusive and ancillary to, and not independent of, the divorce action. *Grimstad et al. v. Johnson et al.*, 61 M 18, 22, 201 P 314.

Allowance of additional counsel fees to the wife without proper showing of necessity or showing that without the allowance of such additional fees the wife would be unable to proceed with her de-

fense is an abuse of discretion and error on the part of the trial court. *Docotovich v. Docotovich*, 125 M 56, 229 P 2d 971, 973.

Poverty of Husband

Ordinarily where the husband commences the suit for divorce his alleged poverty will not be considered on the theory that if he has not the means to pay the required alimony pendente lite, suit money and counsel fees of his wife, he should not bring the action. *State ex rel. Houtchens v. District Court*, 122 M 76, 199 P 2d 272, 277.

Property Rights

A party to an action for divorce may not, by alleging a joint enterprise or partnership or by demanding an accounting, convert the divorce proceeding into any other form of action. *Emery v. Emery*, 122 M 201, 200 P 2d 251, 266.

The filing of a divorce action by the wife does not work a forfeiture of the defendant's property and does not confer upon the trial court the power to summarily oust him from his own home. *Emery v. Emery*, 122 M 201, 200 P 2d 251, 266.

If plaintiff in divorce action is the owner of specific personal property or lawfully entitled to the possession thereof and the same is wrongfully detained by defendant or others, the remedy is by action of claim and delivery and not by a restraining order issued in a divorce action. *Emery v. Emery*, 122 M 201, 200 P 2d 251, 265.

In a divorce action the court has no power to determine whether wife has any interest in property, the record title of which is in the husband alone. *Emery v. Emery*, 122 M 201, 200 P 2d 251, 264.

The court in an action for divorce has no power to divest the title of the husband to specific real or personal property or to adjudge or order an involuntary assignment or transfer thereof to the wife. *Shaw v. Shaw*, 122 M 593, 208 P 2d 514, 524.

Review by Supreme Court of Alimony Allowed

Plaintiff, in an action for divorce on the ground of extreme cruelty, had no property in her own right or means of support and was in ill health; the estate of defendant amounted to approximately \$20,000 over and above his just debts and liabilities; the court awarded plaintiff \$50 per month permanent alimony. Held, in view of the provision of this section, vesting in the district court absolute discretion as to the alimony to be paid by the husband, and the fact that the trial court had jurisdiction to modify its order relating to alimony at any time when considered necessary or desirable, that the decree in this

respect was not open to reversal in the absence of a showing of abuse of discretion. *Boles v. Boles*, 60 M 411, 413, 414, 199 P 912.

Security for Costs and Alimony

Held, that where an absolute decree of divorce was granted the wife with provision for support and maintenance of herself and minor child, the court could properly thereafter upon a showing of change in conditions due to the wilful fault of the husband, require the husband to give security for the payments required to be made to the wife; this section and section 21-139, relating to the matter, being included within the provisions of section 21-140, authorizing an order to give reasonable security under such circumstances. *Wallace v. Wallace*, 92 M 489, 499 et seq., 15 P 2d 915.

Separate Maintenance Allowable Independent of Divorce

Held, that the district court in the exercise of its equity jurisdiction may grant a wife a decree for separate maintenance, together with alimony, suit money and attorney's fees pending suit, asked for on the ground of wilful neglect, independently of an action for divorce, and that it is not divested of such jurisdiction under the maxim "expressio unius est exclusio alterius" by the provision of this section, that in case of wilful desertion the wife may, without applying for a divorce, maintain such an action. *State ex rel. La Point v. District Court*, 69 M 29, 31 et seq., 220 P 88.

References

Cited or applied as section 3677, Revised Codes, in *Decker v. Decker*, 56 M 338, 185 P 168; *Davenport v. Davenport*, 69 M 405, 409, 414, 222 P 422; *Poague v. Poague*, 87 M 433, 434, 288 P 454; *Carboni v. Carboni*, 99 M 279, 43 P 2d 634.

Collateral References

Divorce 199-229; *Husband and Wife* 295, 299.

27 C.J.S. *Divorce* § 202 et seq.; 41 C.J.S. *Husband and Wife* §§ 619, 623.

17 Am. Jur. 431, *Divorce and Separation*, §§ 530-585.

Earning capacity of husband as basis for determining alimony pendente lite. 6 ALR 192.

Wife's possession of independent means as affecting her right to temporary alimony. 15 ALR 781.

Right of husband to maintenance, suit money or attorneys' fees in suit for divorce. 24 ALR 491.

Financial condition of parties as affecting allowance of temporary alimony. 35 ALR 1099.

Nonpayment of temporary alimony as ground for denying right to participate in divorce proceeding. 62 ALR 663.

Appellate court's power to grant alimony, maintenance, or attorneys' fees pending appeal in matrimonial suit. 136 ALR 502.

Misconduct or fault of wife as affecting right to temporary alimony. 2 ALR 2d 307.

Husband's default, contempt, or other misconduct as affecting modification of decree for alimony, separate maintenance, or support. 6 ALR 2d 835.

Retrospective modification of, or refusal to enforce, decree for alimony, separate maintenance, or support. 6 ALR 2d 1277.

Defendant's denial, in action for divorce, separate maintenance, or alimony, that parties are married as affecting plaintiff's right to temporary alimony. 11 ALR 2d 1040.

Right of former wife to counsel fees upon application, after absolute divorce, to increase or decrease alimony. 15 ALR 2d 1252.

Decree for alimony rendered in another state or country (or domestic decree based thereon) as subject to enforcement by equitable remedies or by contempt proceedings. 18 ALR 2d 862.

Allowance of permanent alimony to wife against whom divorce is granted. 34 ALR 2d 313.

Reconciliation as affecting decree for alimony. 35 ALR 2d 741.

Right of nonresident wife to maintain action to separate statements or alimony alone against resident husband. 36 ALR 2d 1369.

Death of husband as affecting alimony. 39 ALR 2d 1406.

21-138. (5770) Orders respecting custody of children. In an action for divorce the court or judge may, before or after judgment, give such direction for the custody, care, and education of the children of the marriage as may seem necessary or proper, and may at any time vacate or modify the same.

History: Ap. p. Sec. 6, p. 431, Bannack Stat.; re-en. Sec. 6, p. 458, Cod. Stat. 1871; re-en. Sec. 512, 5th Div. Rev. Stat. 1879; re-en. Sec. 1004, 5th Div. Comp. Stat. 1887; amd. Sec. 192, Civ. C. 1895; re-en. Sec. 3678, Rev. C. 1907; re-en. Sec. 5770, R. C. M. 1921. Cal. Civ. C. Sec. 138. Field Civ. C. Sec. 73.

Cross-Reference

Children committed to state orphans' home, sec. 10-119.

Attorney's Fees

This section is broad enough to warrant the court in awarding to plaintiff expenses with which to prosecute the proceeding seeking a modification of the award of custody of a minor child, even though divorce has been granted. McDonald v. McDonald, 124 M 26, 218 P 2d 929, 932, 15 ALR 2d 1260.

Children's Care Paramount

While a separation agreement entered into between husband and wife prior to divorce, by which the latter was given the custody of a minor child upon consenting to support it, and releasing the former from any further contributions in that behalf, was binding upon the parties, it was not binding upon the child nor the court, which latter could require the father to contribute to the child's support notwithstanding the release, or permit him to visit it if its interests would thereby be promoted, upon condition that he first make such contribution. Kane v. Kane, 53 M 519, 524, 165 P 457.

Under this section, the interest of the children is the paramount consideration of the court. State ex rel. Floch v. District Court, 107 M 185, 190, 81 P 2d 692.

Court May Disregard Agreement Between Parents

Although the care and custody of the children of a marriage may be provided for by the parties in a private agreement binding upon the parties, the agreement is not binding upon the court or the minors, nor is the fact that the decree makes no mention of the children; hence where it was agreed between the parties that the father have the son and the mother the daughter, each released from any payments toward the care and education of the minor in charge of the other, the court on proper showing could award both children to the mother, the father to pay monthly support for both children. State ex rel. Floch v. District Court, 107 M 185, 190, 81 P 2d 692.

Duty of Court As to Custody of Children

The court should, of its own motion, where the parents make no petition, inquire into the facts and make the necessary order for the custody of the children, and must do so when moved by either party, irrespective of whether such party was in default or not in the suit, or whether he or she was the guilty party. If a mistake is made in the first instance, the court should remedy the same on a proper showing, as soon thereafter as possible. Pearce v. Pearce, 30 M 269, 271, 272, 76 P 289.

The power of the court in a divorce suit to make provision for the children is not founded exclusively upon the next succeeding section, which is applicable to cases only in which the ground of divorce is the fault of the husband. Under the above section the court may, in any case, before or after judgment, make provision for the children as the circumstances require. *Brice v. Brice*, 50 M 388, 393, 147 P 164.

In a proceeding looking to the modification of a decree of divorce, which made no provision for the custody, control, and education of a minor child, the infant's welfare was of paramount consideration. *Kane v. Kane*, 53 M 519, 524, 165 P 457.

Modification of Order—Jurisdiction

Whether an order providing for the custody of a child in a divorce proceeding should be modified is a question which should be presented to the court in which the decree was rendered and such order cannot be modified by another court in a habeas corpus proceeding. *Benson v. Benson*, 121 M 439, 193 P 2d 827, 830.

Power to Modify Decree

On a husband's petition to modify a divorce decree so as to permit him to visit his minor child, the time, place, and duration of the visits, his conduct during such visits, and the extent to which he might have the child in his custody, were all proper subjects for regulation by the court. *Kane v. Kane*, 53 M 519, 525, 165 P 457.

While a decree fixing the custody of minor children in a divorce proceeding is final upon the conditions then existing, the court may modify it upon a showing that the then conditions have changed, the welfare of the children being the paramount consideration. *Jewett v. Jewett*, 73 M 591, 595, 237 P 702.

Id. Where by the decree in a divorce suit defendant husband had been awarded the custody of two children of tender age, the court finding inter alia that both parties were proper persons to have their custody, and later the father lost his position necessitating his removal from the state in search of employment, the court was justified in modifying the decree by awarding the custody of the minors to the mother who had remarried in the meantime and was able to furnish them a comfortable home.

Review by Supreme Court as to Custody of Children

Where the district court found that defendant was a man much attached to his minor children, had at all time provided for them in a suitable manner and taken much interest in their education and general welfare, was a fit and proper person to have their care and custody, that the

children had expressed a desire to live with him, and that it was for their best interest that they should be kept and raised together, and therefore awarded their custody to him, subject to the right of the mother to visit them at reasonable times, the presumption obtains, nothing appearing in the record on appeal to the contrary, that the court exercised the discretion lodged in it, and its action will be affirmed. *Boles v. Boles*, 60 M 411, 413, 199 P 912.

The district judge who hears the testimony in a divorce suit in which the custody of minor children is involved has a superior advantage in determining the controversy, and therefore his decision will not be disturbed on appeal except upon a clear showing of abuse of the discretion lodged in him. *Jewett v. Jewett*, 73 M 591, 595, 237 P 702.

The trial court's decision relating to the custody of a minor child will not be disturbed except upon a clear showing of an abuse of discretion. *Campbell v. Campbell*, 126 M 118, 245 P 2d 847, 849.

Special Order After Final Judgment Appealable

A special order made after final judgment relating to the custody of the children was an appealable order under section 93-8003 but for the appeal to be effective it must be taken within sixty days after the order is made or entered or filed with the clerk under section 93-9004. *McVay v. McVay*, ___ M ___, 270 P 2d 393, 394.

Where Evidence Withheld, Not Ground for New Trial

Where plaintiff wife was granted a decree of divorce as well as custody of a six-year-old child, and the defendant asked for a new trial on the ground that he was in possession of evidence that plaintiff was not a proper person to have such custody, but admitted that he had knowledge of such fact at the time of trial but did not offer proof thereof out of deference to his wife and child, the new trial was properly denied, the statute not providing for a new trial on such ground. The decree is always subject to modification upon a proper showing of unfitness, because the child is a ward of the court. *Wolz v. Wolz*, 110 M 458, 462, 102 P 2d 22.

References

Wallace v. Wallace, 92 M 489, 499, 15 P 2d 915; *Haynes v. Fillner*, 106 M 59, 77, 75 P 2d 802; *State ex rel. Lay v. District Court*, 122 M 61, 198 P 2d 761, 767; *State ex rel. McVay v. District Court*, 126 M 382, 251 P 2d 840, 845.

Collateral References

Divorce—289-303.

27 C.J.S. *Divorce* § 303 et seq.

Jurisdiction to award custody of child having legal domicile in another state. 4 ALR 2d 7.

Material facts existing at time of rendition of decree of divorce but not presented to court as ground for modification of provision as to custody of child. 9 ALR 2d 623.

Nonresidence as affecting one's right to custody of child. 15 ALR 2d 432.

Right of former wife to counsel fees upon application, after absolute divorce, to modify order as to support or custody of child or children. 15 ALR 2d 1270.

Power of court, on its own motion, to modify provisions of divorce decree as to custody of children, upon application for other relief. 16 ALR 2d 664.

Right to custody of child as affected by death of custodian appointed by divorce decree. 29 ALR 2d 258.

Alienation of child's affections as affecting custody award. 32 ALR 2d 1005.

Consideration of investigation by welfare agency or the like in making awards between parents of children. 35 ALR 2d 629.

Purview of charge for "college education." 36 ALR 2d 1323.

21-139. (5771) Support of wife and children on divorce or separation granted to wife. Where a divorce is granted for an offense of the husband, the court may compel him to provide for the maintenance of the children of the marriage and to make such suitable allowance to the wife for her support during her life, or for a shorter period, as the court may deem just, having regard to the circumstances of the parties respectively, and the court may, from time to time, modify its orders in these respects; provided, however, that upon proof of the remarriage of a divorced wife, after the final judgment in a divorce action, the court must order a modification of the judgment by annulling the provisions of the judgment directing the payment of money for the support of the wife.

History: En. Sec. 193, Civ. C. 1895; re-en. Sec. 3679, Rev. C. 1907; re-en. Sec. 5771, R. C. M. 1921; amd. Sec. 1, Ch. 69, L. 1935. Cal. Civ. C. Sec. 139. Field Civ. C. Sec. 73.

Cross-Reference

Support orders, reciprocal enforcement, secs. 94-901-1 to 94-901-18.

Ability to Pay Must Support Judgment

Evidence showing plaintiff's means some five years before the suit was brought, but not what his financial condition was at the time of the trial nor what his earning capacity was, held insufficient to support judgment, imposition of an obligation to pay maintenance being to no purpose in the absence of a showing of ability to pay. *Herrin v. Herrin*, 103 M 469, 475, 63 P 2d 137.

Alimony As Lien On Homestead

Held, that in a divorce case the court may in awarding alimony to the wife make the award a lien on the homestead. *Bast v. Bast et al.*, 68 M 69, 217 P 345.

Alimony Not Allowable When Husband is Granted the Divorce

Held, that under this section, and in the absence of legislation permitting it, the district court is without authority to compel the husband to whom a divorce has been properly granted for offense of the wife to make provision for her support, but that such support can only be awarded

where divorce is granted the wife for the husband's offense. *Bischoff v. Bischoff*, 70 M 503, 512, 226 P 508. See also *Damm v. Damm*, 82 M 239, 249, 266 P 410.

Where the husband is granted a divorce for the wife's wilful desertion, the court has no authority, under this section, to allow the wife permanent alimony. *Albrecht v. Albrecht*, 83 M 37, 44, 269 P 158.

Where a divorce is granted for an offense of the husband, the district court may, under this section, compel him to make suitable allowance to the wife for her support during her life, but where it is granted for an offense of the wife it is without jurisdiction to make an award of permanent alimony to her; if made, it is void and subject to direct or collateral attack at any time, unaffected by the consent of the parties. *Grush v. Grush*, 90 M 381, 386, 3 P 2d 402.

Allowance for Expenses Incident to Appeal, Discretionary

While the right of a wife to appeal from an award of alimony in a divorce proceeding is absolute and fixed by law, the matter of allowance for expenses incident to the appeal and of maintenance during appeal is discretionary with the trial court. *State ex rel. Tong v. District Court*, 109 M 418, 421, 96 P 2d 918.

Amending Decree to Correct Error, Years Later

Held, that where findings of fact and conclusions of law declared that both

plaintiff wife and minor children should share in a \$15 weekly allowance as the parties had agreed, but the decree by mistake or inadvertence omitted the wife's name as a participant, as against the contention that such an amendment would in effect substitute a new judgment, the court may properly allow the amendment that she participate, eight years later, after the children have reached their majority, under this section and its inherent power to correct errors of clerk, judge or counsel, to speak the actual decision, either immediately or years later. Judgment must conform to verdict, decision or findings in substantial particulars. *Morse v. Morse*, 116 M 504, 507, 154 P 2d 982.

Amount of Alimony How Determined

In awarding alimony upon final decree of divorce, the amount which the wife should receive is not a certain proportion of the husband's estate, but is to be determined by the equities of the case and the financial condition of the parties. *Cummins v. Cummins*, 59 M 225, 229, 195 P 1031.

Id. Where the court in a divorce proceeding awarded the wife practically all the estate of the husband readily convertible into cash to the amount of about \$9,000, leaving to him property consisting of a ranch and real estate, some of which was unproductive, valued at \$26,000, the decree held not open to the objection that the court had not fairly and reasonably exercised its discretion because of its refusal to increase the amount so as to make the award equal one-third of the husband's estate.

Plaintiff, in an action for divorce on the ground of extreme cruelty, had no property in her own right or means of support and was in ill health; the estate of defendant amounted to approximately \$20,000 over and above his just debts and liabilities; the court awarded plaintiff \$50 per month permanent alimony. Held, in view of the provision of this section, vesting in the district court absolute discretion as to the alimony to be paid by the husband, and the fact that the trial court had jurisdiction to modify its order relating to alimony at any time when considered necessary or desirable, that the decree in this respect was not open to reversal in the absence of a showing of abuse of discretion. *Boles v. Boles*, 60 M 411, 413, 199 P 912.

Contributions made by the wife to the husband during marriage may be considered by the court in awarding alimony. *Bast v. Bast et al.*, 68 M 69, 77, 217 P 345.

Id. In an action for divorce by the wife the court may, in addition to allowing her periodical sums for the support

and maintenance of a minor child, award her alimony in gross.

In awarding alimony in a final decree of divorce the amount which the wife should receive is not measured by the value of any certain portion of the husband's estate, but is to be determined by the equities of the case, having due regard for the financial condition and necessities of the parties. *Wandel v. Wandel*, 76 M 160, 165, 248 P 864.

Id. Where plaintiff husband in a divorce suit had some property and had regular employment at \$80 per month, and for some time prior to trial defendant wife had been compelled to support herself and at the time of the trial she was without employment or property, an award to her of \$25 per month for twenty months held not an abuse of discretion.

The awarding of alimony is largely a matter of discretion in the district court, based not upon a certain proportion of the husband's income or property, but on the equities of the case, i. e. the means of the husband and the needs of the wife, or the financial condition of the parties; the husband's debts should be taken into consideration and deducted from his income or property; where his debts greatly exceed his assets, his ability to pay should for practical purposes be measured entirely by his income. *Lewis v. Lewis*, 109 M 42, 45, 48, 94 P 2d 211.

Attempt at Modification on Hearing Contempt Charge

Refusal of the trial court to hear contemptor's application for modification of the divorce decree not made until hearing of the contempt charge was in progress, of which application no notice had been given to the wife, held not an abuse of discretion. Any modification of an order awarding alimony could have no effect upon the question of the failure of relator to make any effort to comply with the decree before any attempted modification. In instant case, hearing on modification was denied but set for a later date. *State ex rel. Paganini v. District Court*, 107 M 195, 199, 81 P 2d 697.

Award of Alimony in Lump Sum

While the awarding of alimony is largely discretionary and alimony may properly be allowed a wife in a lump sum, where the only property of substantial value owned by defendant husband consisted of a farm worth about \$18,000, which would have to be sold to satisfy a judgment for \$14,000 alimony, and the record did not disclose that the wife had ability in money matters or would, if she received that amount, use it wisely for either her own or the children's benefit, a monthly or other periodical allowance held

the better practice. *Bristol v. Bristol*, 65 M 508, 211 P 205.

Though alimony may be awarded in a lump sum, by so doing the court fixes it without reference to the wife's continuing need, and while the provision may be increased, the court exhausts its power to reduce it, and she or her estate benefits in spite of her remarriage, later acquisition of income or property, or her death; it is better practice to provide a monthly or other periodical allowance unless its payment is endangered by the husband's lack of industry or other compelling reason, and if monthly alimony can be safeguarded by security, a lump sum should not be awarded; division of a set sum into monthly installments is not properly designated a lump sum. *Lewis v. Lewis*, 109 M 42, 46, 94 P 2d 211.

An award of alimony in a lump sum should be supported by some impelling reason for its necessity or desirability. *Stefonick v. Stefonick*, 118 M 486, 167 P 2d 848, 855, 164 ALR 1211.

Award of Alimony in Lump Sum Bars Appeal from Award

Where plaintiff wife in a divorce suit accepts an award of alimony in a lump sum she is barred from appealing from the award, but her right of appeal and her right to apply to the trial court for modification of the decree under this section are independent rights based upon different statutes, the former right being limited to a certain time, and the latter being dependent upon conditions and circumstances. *State ex rel. Tong v. District Court*, 109 M 418, 423, 96 P 2d 918.

Contempt, Where Evidence Sufficient to Support

Where relator, on the last day on which he was required to make payment of alimony, gave several mortgages on his personal property and used the money to pay past due promissory notes, indicating that he was able to borrow money and could have paid at least part of the alimony and evinced a desire to avoid payment thereof, *inter alia*, held, sufficient evidence to support the judgment of contempt. *State ex rel. Paganini v. District Court*, 107 M 195, 197, 81 P 2d 697.

Enforcement of Orders

A court which severs the marriage ties by granting a valid decree of divorce possesses the necessary power to compel the ex-husband to support his minor children. *State ex rel. Lay v. District Court*, 122 M 61, 198 P 2d 761, 767.

Failure to Pay Alimony—Contempt

On supervisory control to review a judgment of contempt for failure of relator to pay alimony, he asserting his inability

to comply therewith, he was in no position to urge that he was not bound by the judgment from which he did not appeal and which he had made no attempt to modify on the ground that much of the property found by the trial court to have been his belonged to his mother, ownership of such property not having been controlling on the question of contempt. *State ex rel. Paganini v. District Court*, 107 M 195, 197, 81 P 2d 697.

Good Defense on Failure to Pay Alimony—Contempt

Involuntary and non-contumacious inability to obey an order of court in a divorce proceeding that the husband pay the wife a given amount per month for the support of their minor children is a good defense to a charge of contempt for failure to pay. *State ex rel. Floch v. District Court*, 107 M 185, 193, 81 P 2d 692.

Lump Sum Alimony Not Final Unless Decree so Indicates

Held, that if the district court awards alimony in gross, either upon an agreement of the parties or after a hearing where there has been a full, fair and honest disclosure of all conditions and circumstances, the award becomes final after the expiration of time for appeal, and is not subject to modification under the provisions of this section, provided the decree indicates that the award relieves the husband of all future obligation to support. *State ex rel. Tong v. District Court*, 109 M 418, 425, 96 P 2d 918.

Modification of Alimony Decree

Where there is no substantial change in the financial status of person seeking to have the amount of alimony lowered, there is no justification for modifying the decree awarding alimony. The fact that the person seeking the reduction has his real property tied up by the fact that his divorced spouse has pending an action claiming a one-half interest in the property so that he is unable to collect an unpaid amount due him for the purchase of the land by a third person does not amount to a substantial change in his financial status. *McLeod v. McLeod*, 126 M 32, 243 P 2d 321.

Modification of Decree for Support

As the law stood in 1894, one who had become unable to pay alimony adjudged against him in a divorce proceeding could institute proceedings seeking a modification of the judgment. *State ex rel. Nixon v. District Court*, 14 M 396, 398, 40 P 66.

A modification of a decree of divorce embodying a provision for the support of the wife or children ought to be made only

upon good cause shown. *Brice v. Brice*, 50 M 388, 393, 147 P 164.

Id. Where a divorced wife makes application for an increased allowance for her own support, or that of her children whose custody was decreed to her, it must appear that her or their needs are such as to render a larger allowance necessary, and that the husband, by reason of a change in his circumstances, is able to pay the additional amount, the burden of proof being upon the applicant.

Id. The parties to a divorce proceeding in which a certain allowance is made to the wife for her support, by failing to appeal from the order within time, are conclusively bound thereby, even though the allowance prove inadequate.

Orders as To Property

As against the contention that the court in a divorce action had no authority to make an order to convey property, etc., held, that the question could not be reached without the judgment roll before the court, and that even if the issue as to property was not sufficiently tendered by the ordinary allegations of a divorce complaint, under the law various causes of action within the court's jurisdiction may be intermingled, joined in the pleadings, or tendered by evidence introduced, without objection. Under section 93-2301, the court must try such issues and afford such relief as the pleadings and evidence warrant. *State ex rel. Enochs v. District Court*, 113 M 227, 233, 123 P 2d 971.

This section authorizing the court to make such suitable allowance to the wife for her support as the court may deem just does not authorize the court, by decree, to vest in the wife the title to the husband's property. *Rufenach v. Rufenach*, 120 M 351, 185 P 2d 293, 294.

What Not Deemed Excessive Nor Insufficient Award

The fixing of the amount of an award in lieu of alimony in a divorce action is peculiarly within the discretion of the trial judge; hence where the assets of the husband, in the main acquired by him prior to the marriage, amounted to \$25,000, among which however there was a note of his son for \$12,000 which the court apparently considered of little or no value, an award of \$4,000, claimed by the husband as excessive, and by the wife as insufficient, upheld. *Detert v. Detert*, 115 M 313, 322, 142 P 2d 215.

When Equity Will Uphold Separation Agreement Made Prior to Divorce

Where husband, prior to divorce entered into a separation agreement to pay his wife a monthly sum she thereafter sued to enforce payment thereof, and he alleged in his answer that the agreement

was executed collusively in aid of the subsequent divorce and was therefore void as against public policy; the answer not stating a defense under prior holdings of the court, the court granted the wife judgment on the pleadings under the rule of equity that he couldn't accept the benefits and shirk the burdens, particularly where she relinquished her property rights. *Ryan v. Ryan*, 111 M 104, 107, 106 P 2d 337.

Where Decree Did Not Indicate Lump Sum Final

Where the decree in a divorce action did not in clear and unequivocal language indicate that it was final in the sense that it relieved the husband from further obligation to support, the presumption obtained that the court retained jurisdiction to modify the decree under this section; hence the remedy by petition for modification of the decree was available to relatrix applying for writ of supervisory control to annul an order dismissing her petition for allowance of costs of appeal and maintenance during appeal and writ did not lie. *State ex rel. Tong v. District Court*, 109 M 418, 425, 96 P 2d 918.

Where Petition for Modification Should Be Heard Before Contempt

Where the husband petitioned for modification of a decree for monthly payments for support of minor children on the ground he was unable to comply, before being charged with contempt, held, that the court committed error in declining to hear the petition before he had purged himself of the alleged contempt, since if contemnor could have maintained his petition, he might have made a good defense against the contempt charge as to past due payments and had future payments modified. *State ex rel. Floch v. District Court*, 107 M 185, 193, 81 P 2d 692.

References

Cited or applied as section 3679, Revised Codes, in *Brice v. Brice*, 50 M 388, 392, 393, 147 P 164; *Klus v. Lamire*, 71 M 445, 230 P 364; *Wallace v. Wallace*, 92 M 489, 499 et seq., 15 P 2d 915.

Collateral References

Divorce—231-247, 306-310.
27 C.J.S. *Divorce* §§ 228 et seq., 319-322.
17 Am. Jur., *Divorce and Separation*, p. 417, §§ 512 et seq.; p. 511, §§ 673 et seq.

Jurisdiction of court granting divorce to control custody of child as affected by assumption of jurisdiction by juvenile court. 11 ALR 147.

Right to impose fine for failure to pay alimony. 14 ALR 717.

Liability of father for support of children awarded to mother by decree of di-

voiced not providing for maintenance. 15 ALR 569.

Wife's possession of independent means as affecting her right to allowance for support of her children. 15 ALR 781.

Death of husband as affecting alimony. 18 ALR 1040.

Right of husband to maintenance, suit money or attorneys' fees in suit for divorce. 24 ALR 491.

Alimony as affected by remarriage. 30 ALR 79.

Reconciliation as affecting decree for alimony or support money. 40 ALR 1239.

Death of parent as affecting decree for support of child. 50 ALR 241.

Duty of father to support child as affected by decree which awards general custody to him but permits mother to have custody part of time. 52 ALR 286.

Garnishment or attachment of property to enforce order or decree for alimony or allowance in suit for divorce or separation. 56 ALR 841.

Power of court to modify decree for support, alimony, or the like, based on agreement of parties. 58 ALR 639.

Gift by husband to defraud wife of alimony. 64 ALR 496.

Gratuities or expectations as affecting amount of alimony. 66 ALR 219.

Power of court to modify decree as to custody, as affected by absence of parent or child from jurisdiction. 70 ALR 526.

Extraterritorial effect of modified decree as to custody of child. 72 ALR 448.

Jurisdiction of court of state of which neither party is a resident over suit between husband and wife for alimony or division of property rights without divorce. 74 ALR 1242.

Right to custody of child as affected by death of custodian appointed by divorcee decree. 74 ALR 1352.

Construction and effect of statute or rule that denies alimony to wife guilty of marital fault. 82 ALR 539.

Habeas corpus for custody of child as affected by pending suit for divorce or separation. 82 ALR 1146.

Power to reopen decree of divorce which is silent as to, or expressly provides against, alimony, so as to permit modification in that regard. 83 ALR 1248.

Validity and enforceability of agreement to pay more or less alimony than that provided for by decree or order. 84 ALR 299.

Power of court to modify provisions of divorce decree as to alimony as respects past-due instalments. 94 ALR 331.

Power of court which denies divorce or legal separation to award custody or make provision for support of child. 113 ALR 901.

Combining in one stated sum amount allowed as alimony and amount allowed for support of children. 124 ALR 1324.

Propriety of direction that specific property of husband be transferred to wife as alimony, or in lieu of or in addition to, alimony. 133 ALR 860.

Education as element in allowance for benefit of child in decree of divorce or separation. 133 ALR 902.

Propriety and effect of provision in decree in divorce suit in respect of the policy of insurance on life of husband. 145 ALR 522.

Jurisdiction acquired by court in divorce suit over custody and maintenance of child as excluding jurisdiction of other local courts, or as rendering its exercise improper. 146 ALR 1153.

Right of parent to recover for injury to or death of minor child as affected by award of custody of child of another. 147 ALR 482.

Concealment or misrepresentation of financial condition by husband or wife as ground of release from decree of divorce as regards alimony or property settlement. 152 ALR 190.

Power of court to award alimony or property settlement in divorce suit as affected by failure of pleading or notice to make a claim therefor. 152 ALR 445.

Income tax as a factor in fixing or readjusting alimony. 153 ALR 1041.

Specific performance, or other equitable enforcement, of agreement for wife's support or alimony. 154 ALR 323.

Provision in divorce or separation decree incorporating or based upon agreement for alimony or support as enforceable by contempt proceedings. 154 ALR 443.

Final decree or dismissal of suit for divorce as affecting subsequent enforceability by contempt or otherwise of past defaults in payment of temporary alimony. 154 ALR 530.

Order in divorce or separation proceedings concerning removal of child from jurisdiction, and award of custody to non-resident. 154 ALR 552.

Propriety and effect of anticipatory provision in decree for alimony in respect of remarriage or other change of circumstances. 155 ALR 609.

Right to credit on accrued support payments for time child is in father's custody or for other voluntary expenditures. 2 ALR 2d 831.

Husband's default, contempt, or other misconduct as affecting modification of decree for alimony, separate maintenance, or support. 6 ALR 2d 835.

Support provisions of judicial decree for order as limit of father's liability for expenses of child. 7 ALR 2d 491.

Defenses available to husband in civil suit by wife for support. 10 ALR 2d 466.

Change in financial condition or needs of husband or wife as ground for modi-

fication of decree for alimony or maintenance. 18 ALR 2d 10.

Death of parent as affecting decree for support of child. 18 ALR 2d 1126.

Pension of husband as resource which court may consider in determining amount of alimony. 22 ALR 2d 1421.

21-140. (5772) Security for maintenance and alimony. The court or judge may require the husband to give reasonable security for providing maintenance or making any payments required under the provisions of this chapter, and may enforce the same by the appointment of a receiver, or by any other remedy applicable to the case.

History: En. Sec. 194, Civ. C. 1895; re-en. Sec. 3680, Rev. C. 1907; re-en. Sec. 5772, R. C. M. 1921. Cal. Civ. C. Sec. 140. Field Civ. C. Sec. 74.

Husband May Be Required to Execute Mortgage to Secure Payment

Under this section the trial court in a divorce proceeding in awarding alimony may require the defendant husband to execute a mortgage on certain or all of his property for a definitely limited amount and for a definite period as security, and enforce the same in case of nonpayment by any remedy applicable to the case. *Lewis v. Lewis*, 109 M 42, 47, 94 P 2d 211.

Operation and Effect

Held, that in a divorce case the court may in awarding alimony to the wife make the award a lien on the homestead. *Bast v. Bast et al.*, 68 M 69, 77, 217 P 345.

Held, that where an absolute decree of divorce was granted the wife with provision for support and maintenance of herself and minor child, the court could properly thereafter upon a showing of change

in conditions due to the wilful fault of the husband, require the husband to give security for the payments required to be made to the wife; sections 21-137 and 21-139, relating to the matter, being included within the provisions of this section, authorizing an order to give reasonable security under such circumstances. *Wallace v. Wallace*, 92 M 489, 499 et seq., 15 P 2d 915.

References

Cited or applied as section 3680, Revised Codes, in *Decker v. Decker*, 56 M 338, 185 P 168; *Coleman v. Sisson*, 71 M 435, 445, 230 P 582; *State ex rel. Enochs v. District Court*, 113 M 227, 234, 123 P 2d 971; *Stefonick v. Stefonick*, 118 M 487, 167 P 2d 848, 855, 164 ALR 1211.

Collateral References

Divorce⇒244; Husband and Wife⇒293½.

27 C.J.S. Divorce § 274; 42 C.J.S. Husband and Wife § 625.

17 Am. Jur. 486, Divorce and Separation, § 637.

21-141. (5773) If wife has sufficient support, court may withhold allowance. When the wife has a separate estate sufficient to give her proper support, the court or judge, in its or his discretion, may withhold any allowance to her out of the property of the husband.

History: En. Sec. 195, Civ. C. 1895; re-en. Sec. 3681, Rev. C. 1907; re-en. Sec. 5773, R. C. M. 1921. Cal. Civ. C. Sec. 142.

Collateral References

Divorce⇒213, 225, 238; Husband and Wife⇒288.

27 C.J.S. Divorce §§ 209, 223, 233; 42 C.J.S. Husband and Wife § 612.

Wife's possession of independent means as affecting her right to allowance for support of her children. 15 ALR 781.

21-142. (5774) Property may be subjected to support and education of children. The property of the husband and wife may be subjected to the support and education of the children, in such proportions as the court deems just, or the property of the guilty party only may be subjected to such support and education.

History: En. Sec. 196, Civ. C. 1895; re-en. Sec. 3682, Rev. C. 1907; re-en. Sec. 5774, R. C. M. 1921. Cal. Civ. C. Sec. 143.

Collateral References

Divorce⇒306-308; Husband and Wife⇒299½.

27 C.J.S. Divorce §§ 319-321; 42 C.J.S. Husband and Wife § 625.

Education as element in allowance for benefit of child in decree of divorce or separation. 133 ALR 902.

21-143. (5775) Legitimacy of issue—divorce for adultery of husband.

When a divorce is granted for the adultery of the husband, the legitimacy of children of the marriage begotten of the wife before the commencement of the action is not affected.

History: En. Sec. 197, Civ. C. 1895; re-en. Sec. 3683, Rev. C. 1907; re-en. Sec. 5775, R. C. M. 1921. Cal. Civ. C. Sec. 144. Field Civ. C. Sec. 62.	Collateral References Bastards⇒1. 10 C.J.S. Bastards §§ 1, 2.
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21-144. (5776) Same—divorce for adultery of wife. When a divorce is granted for the adultery of the wife, the legitimacy of children begotten of her before the commission of the adultery is not affected; but the legitimacy of other children of the wife may be determined by the court, upon the evidence in the case. In every such case all children, begotten before the commencement of the action, are to be presumed legitimate until the contrary is shown.

History: En. Sec. 198, Civ. C. 1895; re-en. Sec. 3684, Rev. C. 1907; re-en. Sec. 5776, R. C. M. 1921. Cal. Civ. C. Sec. 145. Field Civ. C. Sec. 63.	Collateral References Bastards⇒1, 3, 8. 10 C.J.S. Bastards §§ 1, 2, 3, 16.
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21-145. (5777) Disposition of homestead on divorce. In case of the dissolution of the marriage by the judgment of a court of competent jurisdiction, the homestead, if selected from the separate property of either husband or wife, shall be assigned to the former owner of such property, subject to the power of the court to assign it for a limited period to the innocent party.

History: En. Sec. 199, Civ. C. 1895; re-en. Sec. 3685, Rev. C. 1907; re-en. Sec. 5777, R. C. M. 1921. Cal. Civ. C. Sec. 146.	Collateral References Divorce⇒249(6). 27 C.J.S. Divorce §§ 293, 294. 17 Am. Jur. 490, Divorce and Separation, § 642.
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Cited or applied as section 3685, Revised Codes, in *Thrift v. Thrift*, 54 M 463, 171 P 272.

21-146. (5778) Same—order of court concerning. The court, in rendering a judgment of divorce, must make such order for the disposition of the homestead as in this chapter provided.

History: En. Sec. 200, Civ. C. 1895; re-en. Sec. 3686, Rev. C. 1907; re-en. Sec. 5778, R. C. M. 1921. Cal. Civ. C. Sec. 147.	Collateral References Divorce⇒249(6). 27 C.J.S. Divorce §§ 293, 294.
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21-147. (5779) Same—subject to revision on appeal. The disposition of the homestead, as above provided, is subject to revision on appeal.

History: En. Sec. 201, Civ. C. 1895; re-en. Sec. 3687, Rev. C. 1907; re-en. Sec. 5779, R. C. M. 1921. Cal. Civ. C. Sec. 148.	Collateral References Divorce⇒280. 27 C.J.S. Divorce § 284.
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21-148. (5780) Poor woman may sue without costs. Any woman suing for a divorce, who shall make it appear to the court that she is poor and unable to pay the expenses of such suit, shall be allowed by the court to prosecute her suit without costs.

History: En. Sec. 7, p. 431, Bannack Stat.; re-en. Sec. 7, p. 459, Cod. Stat. 1871; amd. Sec. 1, p. 45, L. 1876; re-en.	Sec. 513, 5th Div. Rev. Stat. 1879; re-en. Sec. 1005, 5th Div. Comp. Stat. 1887; re-en. Sec. 202, Civ. C. 1895; re-en. Sec.
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3688, Rev. C. 1907; re-en. Sec. 5780, R. C. M. 1921.

Collateral References

Divorce \Rightarrow 189.

27 C.J.S. Divorce § 197.

21-149. (5781) Notice of application for alimony. No order for alimony shall be made until notice of the time and place of the hearing shall be served upon the opposite party.

History: En. Sec. 203, Civ. C. 1895; re-en. Sec. 3689, Rev. C. 1907; re-en. Sec. 5781, R. C. M. 1921; amd. Sec. 1, Ch. 136, L. 1945.

Collateral References

Divorce \Rightarrow 214(2), 239.

27 C.J.S. Divorce § 247.

TITLE 22

DOWER

Chapter 1. Dower, 22-101 to 22-117.

CHAPTER 1

DOWER

- Section 22-101. **Dower.**
22-102. Mortgaged lands subject to dower.
22-103. Dower subject to purchase money.
22-104. Dower in surplus under mortgage.
22-105. Dower not to attach unless absolute title.
22-106. Absent wife need not sign deed.
22-107. Widow may elect.
22-108. Renunciation and form of.
22-109. Rights of widow when no issue.
22-110. Rights of widows when lands exchanged.
22-111. Widow's rights in land aliened.
22-112. Antenuptial settlement—when a bar to dower.
22-113. Assent to marriage settlement.
22-114. When dower may be assigned anew.
22-115. Endowed woman not to suffer waste.
22-116. Right to dower not affected by acts of husband.
22-117. Assignment of dower—by what regulated.

22-101. (5813) Dower. A widow shall be endowed of the third part of all lands whereof her husband was seized of an estate of inheritance at any time during the marriage, unless the same shall have been relinquished in legal form. When a wife joins with her husband in the execution of any conveyance of land, she thereby relinquishes her inchoate right, and shall not thereafter have dower therein, except that in case of sale under mortgage signed and executed by herself and husband she shall have a right of dower in the surplus. Equitable estates shall be subject to the widow's dower, and all real estate of every description, contracted for by the husband during his lifetime, the title to which may be completed after his decease.

History: En. Ch. 36, p. 38 et seq., L. 1866, March 21, 1866; this act set aside by act of congress, March 2, 1867. This section en. Sec. 1, p. 63, L. 1876; omitted from Rev. Stat. 1879 and Comp. Stat. 1887; re-en. Sec. 228, Civ. C. 1895; re-en. Sec. 3708, Rev. C. 1907; re-en. Sec. 5813, R. C. M. 1921.

Cross-References

Assignment of dower, sec. 91-2601 et seq.
Partition, sale of dower interest, sec. 93-6352.

Recovery of dower, time for commencing action, sec. 93-2504.

Sale or mortgage of dower of incompetent woman, secs. 91-4705, 91-4706.

Waiver by married woman, sec. 36-130.

Action for Dower

The duty of assigning the widow's dower rests upon those in possession of the husband's real estate, and if this be not done within a reasonable time after his death, she may sue such parties for its recovery and for damages to the extent of one-third the annual value of the profits of the land. *Swartz v. Smole*, 91 M 90, 94, 5 P 2d 566.

Id. Where real property of a decedent was sold by his executor without regard to the widow's dower therein, she in an action against the purchaser to compel assignment of dower to her, was under section 91-2611, entitled to one-third of the rental value thereof from the date of demand therefor upon the purchaser.

Cannot Compel Wife to Release Dower

A court cannot compel a wife to release or convey her inchoate right of dower in lands her husband has agreed to sell by a contract to which she is not a party. *Rosenow v. Miller et al.*, 63 M 451, 458, 207 P 618.

Conveyances

An option given to purchase land is not a conveyance that will bar dower, if the offer to sell is not accepted until after the death of the husband. *Tyler v. Tyler*, 50 M 65, 73, 144 P 1090.

Id. The term "conveyance," as used in this section, means a conveyance effective to transfer the title at the time it was made, and may not be construed to include one which has not become effective until after the rights of the widow have attached.

Creditors Subordinate to Dower

The general rule is that the rights of the husband's creditors are subordinate to the widow's claim of dower, unless on debts constituting a special charge upon the land before coverture or at the time of its acquisition and as a part of the same transaction, and the insolvency of the husband's estate does not affect the widow's right of dower, unless otherwise provided by statute. *Swartz v. Smole*, 91 M 90, 94, 5 P 2d 566.

Dower May Be Relinquished

The statutory methods enumerated in this section and in sections 22-107, 22-109 and 22-112, in which a widow's right to dower may be relinquished, are not exclusive, but an ante-nuptial contract releasing her dower interest in her intended husband's property is binding upon her as widow, provided it is free from fraud or misrepresentation, reasonable in its provisions, and entered into by both parties in good faith. *Hannon v. Hannon*, 46 M 253, 259, 127 P 466.

Election As to Claim of Dower

The wife's right to dower or election under this section and section 22-109 are separate from her rights as an heir of her husband under section 91-403, and her participation in the distribution of the estate as an heir of her husband does not constitute a waiver of the right of election to take one-half of the residue after payment of debts. *Dahlman v. Dahlman*, 28 M 373, 377, 72 P 748. See *Hannon v. Hannon*, 46 M 253, 257, 127 P 466.

Encumbrance On Husband's Title

The lien of a judgment against a husband is subject to the interest of his wife, whether arising from a tenancy in common

with her husband or out of her right of dower. *Manuel v. Turner*, 36 M 512, 519, 93 P 808.

A wife's inchoate right of dower, whether treated as a bare expectancy or as a contingent interest, is such a valuable right or interest as constitutes an encumbrance on her husband's title. *Rosenow v. Miller et al.*, 63 M 451, 458, 207 P 618.

Favored By Law

The right of dower, by which provision is made for the support of the widow out of the lands of her husband and which, inchoate during the life of the latter, becomes complete upon his death, is protected jealously by the law. *Mathews v. Marsden et al.*, 71 M 502, 507 et seq., 230 P 775.

Unpatented Mining Claim

A widow has a dower interest in an unpatented mining claim possessed by her husband at the time of his death. *Clark v. Clark*, 126 M 9, 242 P 2d 992, 993, 994.

Value of Dower

Held, that in view of the code provisions relative to the right of dower depending upon eventualities which cannot be foreseen, it is impossible to place a valuation upon a widow's right in advance of her husband's death, and that therefore plaintiff in an action for specific performance of a land contract to which the vendor's wife was not a party, requiring defendant to convey all his right, title and interest in the premises for the agreed price less the determined value of his wife's dower right, cannot claim abatement from the contract price. *Rosenow v. Miller et al.*, 63 M 451, 458, 207 P 618.

Widow Defined

The word "widow" means "a woman who has lost her husband by death," and does not apply to divorced persons. *O'Malley v. O'Malley*, 46 M 549, 557, 129 P 501.

References

In *re McLure's Estate*, 63 M 536, 539, 208 P 900; In *re Mahaffay's Estate*, 79 M 10, 22, 254 P 875; *Shepherd & Pierson Co. v. Baker*, 81 M 185, 192, 262 P 887; *Emery v. Emery*, 122 M 201, 200 P 2d 251, 263.

Collateral References

Dower \Rightarrow 1-19, 49.
28 C.J.S. Dower §§ 1 et seq., 65.
17 Am. Jur. 649, Dower.

Dower right as passing by quitclaim deed. 44 ALR 1275 and 162 ALR 556.

Misconduct of surviving spouse as affecting marital rights in other's estate. 71 ALR 277 and 139 ALR 486.

Right to dower under separation agreement invalid as contrary to public policy. 109 ALR 1178.

Alien widow's right to dower. 110 ALR 520.

Corporate entity: dower rights of stockholder's spouse in real property of corporation. 32 ALR 2d 705.

Separation agreement as barring dower right. 34 ALR 2d 1043.

22-102. (5814) Mortgaged lands subject to dower. When a person seized of an estate of inheritance in land shall have executed a mortgage of such estate before or after marriage, his widow shall nevertheless be entitled to dower out of the lands mortgaged, as against every person except the mortgagee and those claiming under him.

History: En. Ch. 36, p. 38 et seq., L. 1866, March 21, 1866; this act set aside by act of congress, March 2, 1867. This section en. Sec. 2, p. 63, L. 1876; omitted from Rev. Stat. 1879 and Comp. Stat. 1887; re-en. Sec. 229, Civ. C. 1895; re-en. Sec. 3709, Rev. C. 1907; re-en. Sec. 5814, R. C. M. 1921.

Collateral References

Dower \Rightarrow 25, 44.
28 C.J.S. Dower §§ 39, 60.
17 Am. Jur. 683, Dower, § 31.

22-103. (5815) Dower subject to purchase money. When a husband shall purchase lands during coverture, and shall mortgage such lands to secure the payment of the purchase money thereof, his widow shall not be entitled to dower out of such lands as against the mortgagee, or those claiming under him, although she shall not have united in such mortgage; but she shall be entitled to dower as against all other persons.

History: En. Ch. 36, p. 38 et seq., L. 1866, March 21, 1866; this act set aside by act of congress, March 2, 1867. This section en. Sec. 3, p. 63, L. 1876; omitted from Rev. Stat. 1879 and Comp. Stat. 1887; re-en. Sec. 230, Civ. C. 1895; re-en.

Sec. 3710, Rev. C. 1907; re-en. Sec. 5815, R. C. M. 1921.

Collateral References

Dower \Rightarrow 26.
28 C.J.S. Dower § 36.

22-104. (5816) Dower in surplus under mortgage. When, in the cases specified in the two preceding sections, the mortgagee, or those claiming under him, shall, after the death of such husband, cause the land mortgaged to be sold, either under a power contained in the mortgage or by virtue of a judgment or decree of a court, and any surplus shall remain after the payment of the moneys due on such mortgage and the costs and charges of sale, such widow shall be entitled to the interest or income of one-third part of such surplus for life as her dower.

History: En. Ch. 36, p. 38 et seq., L. 1866, March 21, 1866; this act set aside by act of congress, March 2, 1867. This section en. Sec. 4, p. 64, L. 1876; omitted from Rev. Stat. 1879 and Comp. Stat. 1887; re-en. Sec. 231, Civ. C. 1895; re-en. Sec.

3711, Rev. C. 1907; re-en. Sec. 5816, R. C. M. 1921.

Collateral References

Dower \Rightarrow 15.
28 C.J.S. Dower § 30.

22-105. (5817) Dower not to attach unless absolute title. A widow shall not be endowed of lands conveyed to her husband by way of mortgage, unless he shall have acquired an absolute estate during the marriage.

History: En. Ch. 36, p. 38 et seq., L. 1866, March 21, 1866; this act set aside by act of congress, March 2, 1867. This section en. Sec. 5, p. 64, L. 1876; omitted from Rev. Stat. 1879 and Comp. Stat. 1887; re-en. Sec. 232, Civ. C. 1895; re-en. Sec. 3712, Rev. C. 1907; re-en. Sec. 5817, R. C. M. 1921.

Collateral References

17 Am. Jur. 674, Dower, §§ 23 et seq.
Dower or curtesy in estates of inheritance subject to condition, defeasance, termination, or expiration. 25 ALR 2d 333.

22-106. (5818) Absent wife need not sign deed. Any married man residing and owning real property in the state, whose wife has never been in the state or territory of Montana, can by deed, mortgage, or other conveyance, grant the full title to such property by his own signature, and the wife or widow shall have no dower interest in the property to which the title of the husband is so divested.

History: En. Ch. 36, p. 38 et seq., L. 1866, March 21, 1866; this act set aside by act of congress, March 2, 1867. This section en. Sec. 6, p. 64, L. 1876; omitted from Rev. Stat. 1879 and Comp. Stat. 1887; re-en. Sec. 233, Civ. C. 1895; re-en. Sec. 3713, Rev. C. 1907; re-en. Sec. 5818, R. C. M. 1921.

"So Divested" Means by Deed, Not by Distribution Under Law of Succession

Under this section, the term "so divested" means divestiture by deed and not by operation of law as where the husband

dies intestate and the property is distributed to the heirs under the law of succession. *Mathey v. Mathey*, 109 M 467, 474, 98 P 2d 373.

References

Rosenow v. Miller et al., 63 M 451, 458, 207 P 618; *In re Metcalf's Estate*, 93 M 542, 548, 19 P 2d 905.

Collateral References

Dower 44.
28 C.J.S. *Dower* § 60.

22-107. (5819) Widow may elect. Every devise or bequest to her by her husband's will shall bar a widow's dower in his lands and her share in his personal estate unless otherwise expressed in the will; but she may elect whether she will take under the provisions for her in the will of her deceased husband or will renounce the benefit of such provisions for her, and take her dower in the lands and her share in the personal estate under the succession statutes, as if there had been no will, but not in excess of two-thirds ($\frac{2}{3}$) of the husband's net estate, real and personal, after the payment of creditors' claims, expenses of administration and any and all taxes, including state and federal inheritance and estate taxes.

History: En. Ch. 36, p. 38 et seq., L. 1866, March 21, 1866; this act set aside by act of congress, March 2, 1867. This section en. Sec. 7, p. 65, L. 1876; omitted from Rev. Stat. 1879 and Comp. Stat. 1887; re-en. Sec. 234, Civ. C. 1895; re-en. Sec. 3714, Rev. C. 1907; re-en. Sec. 5819, R. C. M. 1921; amd. Sec. 1, Ch. 231, L. 1955.

Operation and Effect

Where the widow has taken lands devised to her under the provisions of a will, she is barred from claiming dower unless within one year after the probate of the will, she elects to renounce such devise and take her dower therein. *Chadwick v. Tatem*, 9 M 354, 368, 23 P 729.

Under this section the widow is required to renounce benefits under will and elect to take her dower interest, only when the will contains a devise or bequest to her. *Swartz v. Smole*, 91 M 90, 5 P 2d 566.

Id. The existence of debts against the estate of her deceased husband which cannot be satisfied from the personal property of the estate does not affect the dower right of the widow.

Id. Where a widow though not mentioned in her husband's will nevertheless renounced any benefits thereunder and

otherwise made it plain that she would insist on her dower right in the real property of the estate, she may not be said to have been estopped merely because she accepted a sum of money due her as family allowance, a portion of which to her knowledge was derived from the sale of the realty.

References

Cited or applied as section 234, Civil Code, in *Dahlman v. Dahlman*, 28 M 373, 377, 72 P 748; as section 3714, Revised Codes, in *In re Beck's Estate*, 44 M 561, 569, 121 P 784; *Hannon v. Hannon*, 46 M 253, 256, 127 P 466; *Rosenow v. Miller et al.*, 63 M 451, 459, 207 P 618; *In re Melure's Estate*, 63 M 536, 539, 208 P 900; *Mathews v. Marsden et al.*, 71 M 502, 508, 230 P 775; *In re Mahaffay's Estate*, 79 M 10, 22, 254 P 875.

Collateral References

Wills 778-786.
69 C.J. *Wills* §§ 2330 et seq., 2338 et seq., 2361 et seq.
17 Am. Jur. 746, *Dower*, §§ 92-103.

When is widow put to her election between provision made for her by her hus-

band's will, and her dower, homestead, or community right. 22 ALR 437 and 68 ALR 507.

What amounts to widow's election as between antenuptial or postnuptial settle-

ment and husband's will or her rights under statute of descent and distribution, or attack by her upon such settlement. 117 ALR 1001.

22-108. (5820) Renunciation and form of. When a woman is entitled to an election under this chapter, she shall be deemed to have taken such devise, unless, within one year after the authentication or probate of the will, she shall deliver or transmit to the district court of the proper county a written renunciation, which may be in the following form, to-wit: "I, A B, widow of C D, late of the county of _____, state of Montana, do hereby renounce and quit all claims to the benefit of any bequest or devise made to me by the last will and testament of my said deceased husband, which has been exhibited and proved according to law (or otherwise, as the case may be), and I do elect to take in lieu thereof my dower, or legal share of the estate of my said husband," which said letter of renunciation shall be filed in the office of the clerk of the district court, and shall operate as a complete bar against any claim which such widow may afterwards set up to any provision which may have been thus made for her in the will of any testator, in lieu of dower; and by thus renouncing all claims as aforesaid, such widow shall thereupon be entitled to dower in the lands or share in the personal estate of her husband.

History: En. Ch. 36, p. 38 et seq., L. 1866, March 21, 1866; this act set aside by act of congress, March 2, 1867. This section en. Sec. 8, p. 65, L. 1876; omitted from Rev. Stat. 1879 and Comp. Stat. 1887; re-en. Sec. 235, Civ. C. 1895; re-en. Sec. 3715, Rev. C. 1907; re-en. Sec. 5820, R. C. M. 1921.

References

In re McLure's Estate, 63 M 536, 539, 208 P 900.

Collateral References

Wills 793.

69 C.J. Wills § 2388.

22-109. (5821) Rights of widow when no issue. If a husband die, leaving a widow, but no children, nor descendants of children, such widow may, if she elect, have, in lieu of her dower in the estate of which her husband died seized, whether the same shall have been assigned or not, absolute and in her own right, as if she were sole, one-half of all the real estate which shall remain after the payment of all just debts and claims against the deceased husband; provided, that, in case dower in such estate shall have been already assigned, she shall make such new election within two months after being notified of the payment of such claims and debts.

History: En. Ch. 36, p. 38 et seq., L. 1866, March 21, 1866; this act set aside by act of congress, March 2, 1867. This section en. Sec. 9, p. 65, L. 1876; omitted from Rev. Stat. 1879 and Comp. Stat. 1887; re-en. Sec. 236, Civ. C. 1895; re-en. Sec. 3716, Rev. C. 1907; re-en. Sec. 5821, R. C. M. 1921.

Effect of An Option On Dower

Where a wife joined her husband in an option contract on land owned by the latter, executing and depositing a deed in escrow, and the husband died before the holders of the option exercised their right and received the deed from the depository,

the widow was entitled to one-half of the net proceeds of such sale, in lieu of dower, her right to claim one-half of the real estate of her husband, granted by this section, having attached before the deed became effective to divest deceased of title. Tyler v. Tyler, 50 M 65, 73, 144 P 1090.

Effect of Remarriage

Held that the remarriage of a widow did not deprive her of the right to elect to take a one-half interest in the estate of her deceased husband, under this section, in lieu of dower granted by section 22-101, the word "widow" as used in those sections referring to the person and not

to her then state or condition. *Mathews v. Marsden et al.*, 71 M 502, 504, 230 P 775.

Mortgagor Who Failed to File Claim Not Effected by Election

The bar to an election by a widow to take in lieu of dower under this section until all just debts and claims against the deceased husband are paid is for the protection of creditors; therefore where a mortgage creditor fails to file a claim against the estate he is not injured by such election since the land selected in lieu of dower is still impressed with all outstanding liens against it, and the reason for the rule ceased. *Mathey v. Mathey*, 109 M 467, 474, 98 P 2d 373.

Operation and Effect

The right granted to the widow by this section is absolute, and wholly independent of her right to participate in the distribution of the estate as heir of her husband; it attaches to all lands in which she is entitled to dower, as provided in section 22-101. *Dahlman v. Dahlman*, 28 M 373, 377, 72 P 748; *Tyler v. Tyler*, 50 M 65, 70, 144 P 1090.

The wife's right to dower or election under section 22-101 and this section are separate from her rights as an heir of her husband under section 91-403 and her participation in the distribution of the estate as an heir of her husband does not constitute a waiver of the right of election to take one-half of the residue after payment of debts. *Dahlman v. Dahlman*, 28 M 373, 377, 72 P 748.

The district court, when exercising its probate jurisdiction, has no power with reference to dower, and no order which it may make touching the distribution of property during the course of administration can, of itself, affect the right of dower of a widow in any lands to which the right has attached, or any election which the widow has with reference to it. She may bring her action to have her dower allotted to her, notwithstanding the order of distribution makes no mention of her right. In re *Dahlman's Estate* 28 M 379, 380, 72 P 750.

Probate Court Has No Power Over Dower—Decree of Distribution Cannot Effect Right or Election

The district court sitting in probate has no power with reference to dower and no order which it may make touching distribution of estate property during the course of administration can of itself effect the right of dower in lands to which the right has attached or any election of the widow with reference to it, and she

may bring action to allot her dower notwithstanding the order of distribution makes no mention of her right, and subsequent conveyance of her distributive share is not a bar to election to take in lieu of dower in other lands of the deceased. *Mathey v. Mathey*, 109 M 467, 476, 98 P 2d 373.

What Are Just Debts

Administrator's fees, attorney's fees and taxes on the estate for the current year remaining unpaid are not "just debts and claims against the deceased husband," within the meaning of this section which must be paid before the widow is entitled to have one-half of the real property of which the husband died seized, set aside to her in lieu of dower. *Mathews v. Marsden et al.*, 71 M 502, 504, 230 P 775.

Widow's Conveyance of Her Distributive Share of Husband's Estate, Not Relinquishment of Dower in Shares Distributed to Others

The widow's rights as heir and her dower right are separate and distinct; she is entitled to both, and by conveying her distributive share in the estate of her deceased husband she does not thereby relinquish her dower right in the shares of the estate received by other heirs. *Mathey v. Mathey*, 109 M 467, 475, 98 P 2d 373.

Widow's Right to Dower Held Ripened Rule of Property

While in some instances construction of this section relating to dower as declared in *Dahlman v. Dahlman*, 28 M 373, 72 P 748, respecting the right of the widow to assert her claim despite the rights of creditors, heirs or any persons whomsoever, may render real estate titles uncertain, it has been a rule of property in the state for more than 35 years, and must stand until modified by the legislature. *Mathey v. Mathey*, 109 M 467, 476, 98 P 2d 373.

References

Cited or applied as section 3716, Revised Codes, in *In re Beck's Estate*, 44 M 561, 569, 121 P 784; *Hannon v. Hannon*, 46 M 253, 257, 127 P 466; *Rosenow v. Miller et al.*, 63 M 451, 459, 207 P 618; In re *Mahaffay's Estate*, 79 M 10, 23, 254 P 875; *Swartz v. Smole*, 91 M 90, 95, 5 P 2d 566; *Harrison v. Cannon*, 122 M 318, 203 P 2d 978.

Collateral References

Descent and Distribution—§52-67; Dower—§4.
26 C.J.S. Descent and Distribution §§ 48-60; 28 C.J.S. Dower § 5.

22-110. (5822) Rights of widows when lands exchanged. If a husband, seized of an estate of inheritance in lands, exchanges it for other lands, his

widow shall not have dower of both, but shall make her election as herein-before provided, to be endowed of the lands given, or of those taken in exchange. And if such election be not evinced by the commencement of the proceedings for the recovery and assignment of her dower of the lands given in exchange within one year after the death of her husband, she shall be deemed to have elected to take her dower of the lands taken in exchange.

History: En. Ch. 36, p. 38 et seq., L. 1866, March 21, 1866; this act set aside by act of congress, March 2, 1867. This section en. Sec. 9, p. 65, L. 1876; omitted from Rev. Stat. 1879 and Comp. Stat. 1887; re-en. Sec. 237, Civ. C. 1895; re-en. Sec. 3717, Rev. C. 1907; re-en. Sec. 5822, R. C. M. 1921.

Collateral References

Dower \Rightarrow 44.
28 C.J.S. Dower § 60.
17 Am. Jur. 683, Dower, § 31.

22-111. (5823) Widow's rights in land aliened. When a widow is entitled to dower out of any lands aliened by her husband in his lifetime, and such lands have been enhanced in value after the alienation, such lands shall be estimated in setting out the widow's dower according to their value at the time when they were so aliened.

History: En. Sec. 18, p. 68, L. 1876; re-en. Sec. 238, Civ. C. 1895; re-en. Sec. 3718, Rev. C. 1907; re-en. Sec. 5823, R. C. M. 1921.

Collateral References

Dower \Rightarrow 86.
28 C.J.S. Dower § 98.

22-112. (5824) Antenuptial settlement—when a bar to dower. A woman may be barred of her dower in all of the land of her husband by a jointure settled on her with her assent before the marriage; provided, such jointure consists of a freehold estate in lands for the life of the wife, at least, to take effect in possession or profits immediate on the death of the husband.

History: En. Sec. 19, p. 68, L. 1876; re-en. Sec. 239, Civ. C. 1895; re-en. Sec. 3719, Rev. C. 1907; re-en. Sec. 5824, R. C. M. 1921.

Codes, in Hannon v. Hannon, 46 M 253, 257, 127 P 466; Mathews v. Marsden et al., 71 M 502, 509, 230 P 775.

References

Cited or applied as section 239, Civil Code, in Dahlman v. Dahlman, 28 M 373, 377, 72 P 748; as section 3719, Revised

Collateral References

Dower \Rightarrow 41.
28 C.J.S. Dower § 55.
17 Am. Jur. 721, Dower, §§ 66-69.

22-113. (5825) Assent to marriage settlement. Such assent shall be expressed if the woman is of full age by her becoming a party to the conveyance by which it is settled, and if she is under age, by her joining with her father or guardian in such conveyance.

History: En. Sec. 20, p. 68, L. 1876; re-en. Sec. 240, Civ. C. 1895; re-en. Sec. 3720, Rev. C. 1907; re-en. Sec. 5825, R. C. M. 1921.

Code, in Dahlman v. Dahlman, 28 M 373, 377, 72 P 748; as section 3720, Revised Codes, in Hannon v. Hannon, 46 M 253, 257, 127 P 466; Mathews v. Marsden et al., 71 M 502, 509, 230 P 775.

References

Cited or applied as section 240, Civil

22-114. (5826) When dower may be assigned anew. If a woman is lawfully evicted of lands assigned to her as a dower or settled upon the jointure, or is deprived of the provisions made for her by will or otherwise,

in lieu of dower, she may be endowed anew in like manner as if such assignment, jointure, or other provision had not been made.

History: En. Sec. 21, p. 68, L. 1876; re-en. Sec. 241, Civ. C. 1895; re-en. Sec. 3721, Rev. C. 1907; re-en. Sec. 5826, R. C. M. 1921.

Collateral References

Dower ⊞ 112-115.
28 C.J.S. Dower §§ 81, 110, 111.

22-115. (5827) Endowed woman not to suffer waste. No woman endowed of any lands shall commit or suffer waste on the same; but she shall maintain the houses and tenements with the fences and appurtenances in good repair, and shall be liable to the person having the next immediate estate of inheritance therein for all damages occasioned by any waste committed or suffered by her.

History: En. Sec. 22, p. 68, L. 1876; re-en. Sec. 242, Civ. C. 1895; re-en. Sec. 3722, Rev. C. 1907; re-en. Sec. 5827, R. C. M. 1921.

22-116. (5828) Right to dower not affected by acts of husband. No act, deed, or conveyance, executed or performed by the husband, without the assent of his wife, evidenced by her acknowledgment thereof, in the manner required by law to pass the estates of married women, and no judgment or decree confessed by or recovered against him, and no laches, default, covin, or crime of the husband, shall prejudice the rights of the wife to her dower or jointure, or preclude her from the recovery thereof, if otherwise entitled thereto.

History: En. Sec. 243, Civ. C. 1895; re-en. Sec. 3723, Rev. C. 1907; re-en. Sec. 5828, R. C. M. 1921.

Operation and Effect

The defense to a suit to foreclose a mortgage on realty that the instrument had not been acknowledged by the wife of the mortgagor is a privilege personal to the wife, which she may waive; it may not be interposed by another for her where her dower right is not in question. *Angus v. Mariner et al.*, 85 M 365, 372, 278 P 996.

Where the wife of a vendor did not sign the contract of sale sought to be specifically enforced she could not be divested

of her inchoate right of dower by the decree granting the relief. *Shaw v. McNamara & Marlow, Inc.*, 85 M 389, 397, 278 P 836.

A sale of real property of a decedent by an executor is inoperative so far as the widow's dower is concerned, and the purchaser takes title subject to her dower right which must be assigned against the purchaser. *Swartz v. Smole*, 91 M 90, 96, 5 P 2d 566.

Collateral References

Dower ⊞ 38-48.
28 C.J.S. Dower § 57 et seq.

22-117. (5829) Assignment of dower—by what regulated. The procedure for the assignment of dower upon the death of the husband is regulated by the provisions of sections 91-2601 to 91-2612.

Collateral References

Dower ⊞ 66.
28 C.J.S. Dower §§ 79, 83.

TITLE 23

ELECTIONS

- Chapter 1. 1. Time of holding elections—proclamations, 23-101 to 23-106.
 2. Publication of questions submitted to popular vote, 23-201, 23-202.
 3. Qualifications and privileges of electors, 23-301 to 23-311.
 4. Election precincts, 23-401 to 23-407.
 5. Registration of electors, 23-501 to 23-534.
 6. Judges and clerks of elections, 23-601 to 23-611.
 7. Election supplies, 23-701 to 23-713.
 8. Nomination of candidates for special elections by convention or primary meetings or by electors, 23-801 to 23-820.
 9. Party nominations by direct vote—the direct primary, 23-901 to 23-936.
 10. Presidential electors and delegates to national conventions, 23-1001 to 23-1008.
 11. Ballots, preparation and form, 23-1101 to 23-1117.
 12. Conducting elections—the polls—voting and ballots, 23-1201 to 23-1228.
 13. Voting by absent electors, 23-1301 to 23-1321.
 14. Voting by absent electors in military service, 23-1401 to 23-1406.
 15. Registration of electors absent from county of their residence, 23-1501 to 23-1503.
 16. Voting machines—conduct of election when used, 23-1601 to 23-1618.
 17. Election returns, 23-1701 to 23-1715.
 18. Canvass of election returns—results and certificates, 23-1801 to 23-1819.
 19. Failure of elections—proceedings on tie vote, 23-1901 to 23-1904.
 20. Nonpartisan nomination and election of judges of supreme court and district courts, 23-2001 to 23-2014.
 21. Presidential electors, how chosen—duties, 23-2101 to 23-2111.
 22. Members of congress—elections and vacancies, 23-2201 to 23-2205.
 23. Recount of ballots—results, 23-2301 to 23-2308.
 24. Conventions to ratify proposed amendments to constitution of the United States, 23-2401 to 23-2411.

CHAPTER 1

TIME OF HOLDING ELECTIONS—PROCLAMATIONS

- Section 23-101. General elections, when to be held.
 23-102. Special elections—purpose and calling.
 23-103. Election proclamations by the governor.
 23-104. Governor's proclamation, contents.
 23-105. Publication and posting by county commissioners.
 23-106. Election proclamation by county commissioners.

23-101. (531) General elections, when to be held. There must be held throughout the state, on the first Tuesday after the first Monday of November, in the year eighteen hundred and ninety-four, and in every second year thereafter, an election to be known as the general election.

History: En. Sec. 1150, Pol. C. 1895; Election law violations, sec. 94-1401 et re-en. Sec. 450, Rev. C. 1907; re-en. Sec. 531, R. C. M. 1921. Cal. Pol. C. Sec. 1041. seq.
 Initiative and referendum, sec. 37-101 et seq.

Cross-References

Cities and towns, elections of officers, secs. 11-701 to 11-734.

Corrupt practices act, secs. 94-1427 to 94-1474.

Definition

A general election is one held for the election of officers throughout the state. State ex rel. Rowe v. Kehoe, 49 M 582, 591, 144 P 162.

References

Cited or applied as section 450, Revised Codes, in State ex rel. Patterson v. Lentz, 50 M 322, 338, 146 P 932; Mulholland v. Ayers et al., 109 M 558, 562, 99 P 2d 234; Maddox v. Board of State Canvassers et al., 116 M 217, 223, 149 P 2d 112; La-

Borde v. McGrath, 116 M 283, 287, 149 P 2d 913; Pioneer Motors v. State Highway Commission, 118 M 333, 165 P 2d 796, 800.

Collateral References

Elections⇒38.
29 C.J.S. Elections § 77.

23-102. (532) Special elections—purpose and calling. Special elections are such as are held to supply vacancies in any office, and are held at such times as may be designated by the proper officer or authority. The board of county commissioners shall be authorized to call a special election at any time for the purpose of submitting to the qualified electors of the county a proposition to raise money for any public improvement desired to be made in the county.

History: En. Sec. 1151, Pol. C. 1895; amd. Sec. 451, Rev. C. 1907; re-en. Sec. 532, R. C. M. 1921. Cal. Pol. C. Sec. 1043.

Cross-References

Airport bonds, sec. 1-804.
Beer, local option elections, sec. 4-350 et seq.
Cities and towns, bond elections, secs. 11-2301 to 11-2330.
County bonds and warrants, secs. 16-2001 to 16-2050.
Local option elections, state liquor control act, sec. 4-142 et seq.
Retail liquor licenses, local option election, secs. 4-431 to 4-437.
School bonds, secs. 75-3901 to 75-3944, 75-4112, 75-4113, 75-4115 to 75-4118, 75-4601 to 75-4606.
School taxation, secs. 75-3801 to 75-3805.

Definition

A special election is one held to supply a vacancy in a public office, or one in which is submitted to the electors a proposition to raise money for any public improvement. State ex rel. Rowe v. Kehoe, 49 M 582, 591, 144 P 162.

23-103. (533) Election proclamations by the governor. At least sixty days before a general election, and whenever he orders a special election to fill a vacancy in the office of state senator or member of the house of representatives, at least ten days before such special election, the governor must issue an election proclamation, under his hand and the great seal of the state, and transmit copies thereof to the boards of commissioners of the counties in which such elections are to be held.

History: En. Sec. 1160, Pol. C. 1895; re-en. Sec. 452, Rev. C. 1907; re-en. Sec. 533, R. C. M. 1921. Cal. Pol. C. Sec. 1053.

Operation and Effect

The governor issued his proclamation giving notice of a general election to be held November 8, 1904, under this and the following section, and omitted therefrom the mention of an election of three judges for the second judicial district,

"Vacancy"

The word vacancy as applied to a public office has no technical meaning, and it is not to be taken in a strict technical sense in every case. It may be said that an office is vacant when it is empty and without an incumbent who has a right to exercise its functions and take its fees or emoluments even though the vacancy is not a corporal one. "An office without an incumbent is vacant." LaBorde v. McGrath, 116 M 283, 292, 149 P 2d 913.

References

Cited or applied as section 451, Revised Codes, in State ex rel. Patterson v. Lentz, 50 M 322, 338, 146 P 932; Mulholland v. Ayers et al., 109 M 558, 562, 99 P 2d 234; Bottomly v. Ford, 117 M 160, 163, 157 P 2d 108.

Collateral References

Elections⇒32; Counties⇒151.
29 C.J.S. Elections § 66; 20 C.J.S. Counties § 226.

and called for the election of two judges. Upon mandamus proceedings against the governor the relator claimed that three judges should have been mentioned in the proclamation, and that he was elected and entitled to receive from the governor a commission as judge. As it failed to appear that the electors voted for more than two candidates for judgeships, the petition was dismissed. State ex rel. Breen v. Toole, 32 M 4, 8, 79 P 403.

As this section does not impose upon the governor the duty to call an election to fill vacancies other than those in the offices of state senator and member of the house of representatives, and he is not presumed to know what, if any, vacancy exists in any local county office, apparently proclamation by the governor is necessary only when an election is to be held to fill offices for the next regular term, except to fill vacancies in the two offices mentioned. *State ex rel. Rowe v. Kehoe*, 49 M 582, 591, 144 P 162.

While the provisions of the codes relating to the manner of calling special elections are crude and not in the most appropriate terms to confer the necessary powers upon boards of county commissioners, they are nevertheless sufficient for this purpose. *State ex rel. Patterson v. Lentz*, 50 M 322, 343, 146 P 932.

Id. A statement in the proclamation of the governor giving notice of a general election, that among other officers there was to be elected "also a district

judge, in any judicial district where a vacancy may exist," was not such a notice of the necessity of filling a vacancy by election as required by this section.

Id. The governor's proclamation should state the offices to be filled, especially where a state office, such as a judgeship, held by his appointee, is to be filled; but, if the people have actual notice that a judge is to be elected and indicate their choice, no insufficiency of notice, in the governor's proclamation, of a vacancy in that office, in any particular district, or other informality in the election, will suffice to defeat their will, as expressed by their votes.

References

State ex rel. Wulf v. McGrath, 111 M 96, 100, 106 P 2d 183; *State ex rel. Grant v. Eaton*, 114 M 199, 209, 133 P 2d 588.

Collateral References

Elections ⇐ 40.
29 C.J.S. Elections § 72.

23-104. (534) Governor's proclamation, contents. Such proclamation must contain:

1. A statement of the time of election, and the offices to be filled.
2. An offer of rewards in the following form: "And I do hereby offer a reward of one hundred dollars for the arrest and conviction of any person violating any of the provisions of sections 94-1401 to 94-1426. Such rewards to be paid until the total amount hereafter expended for the purpose reaches the sum of five thousand dollars."

History: En. Sec. 1161, Pol. C. 1895; re-en. Sec. 453, Rev. C. 1907; re-en. Sec. 534, R. C. M. 1921. Cal. Pol. C. Sec. 1054.

References

Cited or applied as section 1161, Political Code, in *State ex rel. Breen v. Toole*, 32 M 4, 8, 79 P 403; as section 453, subdivision 1, Revised Codes, with other sections, in *State ex rel. Rowe v. Kehoe*, 49 M

582, 591, 144 P 162; as section 453, Revised Codes, in *State ex rel. Patterson v. Lentz*, 50 M 322, 343, 146 P 932; *Nordquist v. Ford*, 112 M 278, 283, 114 P 2d 1071.

Collateral References

Elections ⇐ 41.
29 C.J.S. Elections § 73.

23-105. (535) Publication and posting by county commissioners. The board of county commissioners, upon the receipt of such proclamation, may, in the case of general or special elections, cause a copy of the same to be published in some newspaper printed in the county, if any, and to be posted at each place of election at least ten days before the election; and in case of special elections to fill a vacancy in the office of state senator or member of the house of representatives, the board of county commissioners, upon receipt of such proclamation, may in their discretion, cause a copy of the same to be published or posted as hereinbefore provided, except that such publication or posting need not be made for a longer period than five days before such election.

History: En. Sec. 1162, Pol. C. 1895; re-en. Sec. 454, Rev. C. 1907; re-en. Sec. 535, R. C. M. 1921. Cal. Pol. C. Sec. 1055.

Not Applying to Measures Put to People by Legislature

Contention that because of failure to have the Governor's proclamation that Ch.

168, Laws 1939 (omitted), would be submitted to the electors at the general election of 1940 published in newspapers as required by this section and section 37-104, the act is invalid, held not meritorious, these sections applying only to measures put before the people by their own petition, and not by the legislature, and notice amply met by distribution of copies of the law. *Nordquist v. Ford*, 112 M 278, 283, 114 P 2d 1071.

References

Cited or applied as section 454, Revised Codes, in *State ex rel. Rowe v. Kehoe*, 49 M 582, 591, 144 P 162; in *State ex rel. Cryderman v. Wienrick*, 54 M 390, 170 P 942; *State ex rel. Freeze v. Taylor*, 90 M 439, 444, 4 P 2d 479; *State ex rel. Wulf v. McGrath*, 111 M 96, 100, 106 P 2d 183.

Collateral References

Elections—42.
29 C.J.S. Elections § 74.

23-106. (536) Election proclamation by county commissioners. Whenever a special election is ordered by the board of county commissioners, they must issue an election proclamation, containing the statement provided for in subdivision one of section 23-104, and must publish and post it in the same manner as proclamations issued by the governor.

History: En. Sec. 1163, Pol. C. 1895; re-en. Sec. 455, Rev. C. 1907; re-en. Sec. 536, R. C. M. 1921. Cal. Pol. C. Sec. 1056.

Operation and Effect

The notice of election does not take the place of the election proclamation. *Evers v. Hudson*, 36 M 135, 154, 92 P 462.

This section has no reference to elections held for raising money for public improvements. The power conferred in this behalf is exercised under special provisions on the subject, found in that part of the codes relating to county government. *State ex rel. Rowe v. Kehoe*, 49 M 582, 592, 144 P 162.

Id. In case of vacancies in county offices, boards of county commissioners have the power, and it is their duty to call and provide for the holding of special elections to fill them.

References

Cited or applied as section 455, Revised Codes, in *State ex rel. Patterson v. Lentz*, 50 M 322, 343, 146 P 932; *State ex rel. Cryderman v. Wienrick*, 54 M 390, 399, 170 P 942.

Collateral References

Elections—40-42.
29 C.J.S. Elections §§ 72-74.

CHAPTER 2

PUBLICATION OF QUESTIONS SUBMITTED TO POPULAR VOTE

Section 23-201. Publication and printing of amendments to constitution.
23-202. Advertisement of questions to be submitted.

23-201. (537.1) Publication and printing of amendments to constitution. Whenever a proposed constitutional amendment or amendments are submitted to the people of the state for popular vote, the secretary of state shall cause the said proposed amendment or amendments to be published in full once a week in one newspaper in each county of the state, if such there be, for three (3) months previous to the next general election for members of the legislative assembly. Such publication shall not be had in more than one paper in any one county in the state.

The secretary of state shall also cause to be printed a pamphlet containing a true and exact copy of the proposed amendment or amendments, and a true and exact copy of the existing constitutional provisions if the proposed constitutional amendment or amendments is or are a revision of an existing amendment or amendments, and the amendment or amendments in the form in which it or they will be printed on the official ballot. The said proposed amendment or amendments, printed as herein provided, shall

then be distributed as provided in section 37-107. The cost of publication of said amendment or amendments, and the cost of printing said pamphlet or pamphlets shall be a proper charge against the state at the rate, as provided for in the statutes for state printing.

History: En. Sec. 1, Ch. 62, L. 1927; amd. Sec. 1, Ch. 104, L. 1945.

Operation and Effect

Held, that legislature by repealing section 537, R. C. M. 1935 and leaving in effect this section requiring publication of proposed constitutional amendments indicated its intent to disperse with publication prior to general election of legis-

lative acts referred to the people by the legislature, or the governor's proclamation that such act would be voted upon at such election. *Nordquist v. Ford et al.*, 112 M 278, 283, 114 P 2d 1071.

Collateral References

Constitutional Law 9(1).
16 C.J.S. Constitutional Law § 10.

23-202. (538) Advertisement of questions to be submitted. Questions to be submitted to the people of the county or municipality must be advertised by publication in at least one newspaper within the county or municipality, once a week for two successive weeks, and one of such publications in such newspaper must be upon the last day upon which such newspaper is issued before the election.

History: En. Sec. 1, Ch. 130, L. 1919; re-en. Sec. 538, R. C. M. 1921.

Reference

State ex rel. *Wulf v. McGrath*, 111 M 96, 100, 106 P 2d 183.

Collateral References

Elections 40 et seq.
29 C.J.S. Elections § 71 et seq.

CHAPTER 3

QUALIFICATIONS AND PRIVILEGES OF ELECTORS

- Section 23-301. Elections to be by ballot.
23-302. Qualifications of voter.
23-303. Qualifications of electors at elections on incurring state indebtedness.
23-304. Lists and poll books.
23-305. Duties of secretary of state and county clerks.
23-306. Repealing clause—exception.
23-307. Qualification of electors on elections concerning state tax levy or debt.
23-308. Privilege from arrest.
23-309. Exempt from military duty on election day.
23-310. Idiot or insane.
23-311. Who are taxpayers.

23-301. (539) Elections to be by ballot. All elections by the people shall be by ballot.

History: En. Sec. 1180, Pol. C. 1895; re-en. Sec. 461, Rev. C. 1907; re-en. Sec. 539, R. C. M. 1921.

Collateral References

Elections 161.
29 C.J.S. Elections § 149.

23-302. (540) Qualifications of voter. Every person of the age of twenty-one years or over, possessing the following qualifications, if his name is registered as required by law, is entitled to vote at all general and special elections and for all officers that now are, or hereafter may be, elective by the people, and upon all questions which may be submitted to the vote of the people: First, he must be a citizen of the United States; second, he must have resided in the state one year and in the county thirty days immediately preceding the election at which he offers to vote. No person

convicted of felony has the right to vote unless he has been pardoned. Nothing in this section contained shall be construed to deprive any person of the right to vote who had such right at the time of the adoption of the state constitution. After the expiration of five years from the time of the adoption of the state constitution, no persons except citizens of the United States have a right to vote.

History: En. Sec. 1181, Pol. C. 1895; re-en. Sec. 462, Rev. C. 1907; re-en. Sec. 540, R. C. M. 1921. Cal. Pol. C. Sec. 1083.

NOTE.—The word “male” appearing in the first line of the preceding section as enacted in 1895 is omitted from this code to conform to the constitutional amendment.

Voting Is an Affirmative Act, Vote for Deceased Candidate Not Counted as Opposed to Write-in

The casting of a ballot at an election of public officers is an affirmative, not a negative act—an act done with intention of voting for someone; hence if it is the purpose of voters to defeat a certain candidate, that purpose can be accomplished only by voting for some person in opposition to him, and not by voting for a person who died some weeks before election with the expectation that the vote cast for him would be counted as opposed to the person sought to be defeated; one who has died is no longer a person for whom, under art. IX, sec. 2, Const., a voter may cast his ballot. State

ex rel. Wolff v. Guerink, 111 M 417, 426, 109 P 2d 1094.

References

Referred to as section 1181, of the Political Code of 1895; in State ex rel. Kennedy v. Martin, 24 M 403, 408, 62 P 588; cited or applied as section 462, Revised Codes, in Sommers v. Gould, 53 M 538, 544, 165 P 599; State ex rel. Henderson v. Dawson Co., 87 M 122, 142, 286 P 125; State ex rel. Durland v. Board of County Commrs., 104 M 21, 27, 64 P 2d 1060; State ex rel. Van Horn v. Lyon, 119 M 212, 173 P 2d 891, 892; In re Ingersol's Estate, — M —, 272 P 2d 1003, 1005.

Collateral References

Elections—59 et seq.
29 C.J.S. Elections § 16 et seq.
18 Am. Jur., Elections, p. 212, §§ 49 et seq.; p. 281, §§ 152 et seq.

Removal by executive clemency of disqualification to vote resulting from conviction of crime as applicable in case of conviction in federal court or court of another state. 135 ALR 1493.

23-303. Qualifications of electors at elections on incurring state indebtedness. At all elections at which the question submitted is the incurring of a state debt, the issuance of bonds or debentures by the state, other than refunding bonds or debentures, or the levying of a state tax for any purpose, only registered electors residing within the state and who are taxpayers upon property therein and whose names appear upon the last completed assessment roll of some county of the state for state, county and school district taxes, shall be qualified to vote on such question. Whenever any such question is to be submitted at an election, other than a general biennial state election, the county clerk of each county must cause to be published one time in the official newspaper of the county a notice, signed by him, stating that registration will close at noon on the thirtieth day prior to the date for the holding of the election at which the question is to be submitted, unless the act providing for the submission of the question shall fix a different time for the giving of such notice and at that time registration shall be closed. Such notice shall be published at least ten (10) days prior to the date when registration will be closed, unless the act providing for the submission of the question shall fix a different time for such closing of registration. Provided, that if the question is to be submitted at a general biennial state election then such notice of the closing of registration and the closing of registration shall be controlled and governed by

the laws applying to the giving of such notice and closing of registration for such general biennial election.

History: En. Sec. 1, Ch. 28, L. 1945.

Objection Must be Raised before Election

The objection that a measure creates a state debt, levy, or liability and that therefore it should have been placed upon a separate ballot as required by this section, is waived if not raised before the election. State ex rel. Graham v. Board of Examiners, 125 M 419, 239 P 2d 283, 290.

References

Pioneer Motors v. State Highway Commission, 118 M 333, 165 P 2d 796, 800.

Collateral References

State voting rights of residents of federal military establishment. 34 ALR 2d 1193.

What constitutes "conviction" within constitutional or statutory provision disfranchising one convicted of crime. 36 ALR 2d 1238.

23-304. Lists and poll books. After the closing of registration the county clerk of each county shall promptly prepare lists of registered electors of all voting precincts in his county. He shall also prepare the poll book for each precinct in the manner provided by section 23-515, and deliver the same to the judges of election prior to the opening of the polls. In preparing poll books it shall not be necessary for the county clerk to make separate poll books containing only the names of electors who are qualified to vote on the question of the incurring of a state debt, the issuance of bonds or debentures by the state or the levying of a state tax. In lieu of preparing such a list of electors qualified to vote on such question, the county clerk shall stamp the word "TAXPAYER" on the poll book opposite the name of each qualified elector who is a taxpayer and entitled to vote upon any of the questions hereinbefore indicated. No other showing shall be required to establish that such elector is in fact a taxpayer and entitled to vote as such.

All of the laws of this state applying to the holding of general biennial state elections, insofar as the same are applicable thereto and not in conflict with any of the provisions of this act, shall apply to, and govern and control such election and the canvassing and return of the votes cast on such question at such election; and abstracts made by the several county clerks shall be returned to the secretary of state in the manner provided by sections 23-1812, 23-1813, for the abstract of votes for state officers.

History: En. Sec. 2, Ch. 28, L. 1945;
amd. Sec. 1, Ch. 92, L. 1949.

Collateral References

Elections 113.
29 C.J.S. Elections § 49.

23-305. Duties of secretary of state and county clerks. When any such law is to be submitted at a general biennial election, all of the provisions of section 37-107, prescribing the duties of the secretary of state and county clerks, shall apply to and govern and control the printing and distribution of copies of such law.

History: En. Sec. 3, Ch. 28, L. 1945.

23-306. Repealing clause—exception. All acts and parts of acts in conflict herewith are hereby repealed; provided, however, that nothing in this act shall be deemed to repeal section 23-307.

History: En. Sec. 4, Ch. 28, L. 1945.

23-307. Qualification of electors on elections concerning state tax levy or debt. Whenever any question is submitted at any election concerning the creation of any tax levy for the state or the creation of any debt or liability on the part of the state, all qualified electors who are registered and whose names appear upon the last completed assessment roll of any county preceding such election, shall be entitled to vote thereon. If any elector shall be registered in any county and the name of such elector does not appear on such last completed assessment roll for such county, but does appear on the last completed assessment roll for any other county in the state, such elector shall be entitled to vote on any such question in the precinct in which he is registered, if he shall present to the county clerk and recorder before the close of registration of the election in which he wishes to vote, either a receipt from the treasurer of the county in which his property is assessed on such assessment roll showing the payment of the taxes computed against such assessment, or a certificate from the treasurer of such county certifying that such elector is assessed with property on such assessment roll but that the taxes had not been paid at the time of the issuance of such certificate. Every such certificate issued by a county treasurer shall be dated, numbered, give the name of the elector, a brief description of the property assessed to him, with the amount of the taxes thereon, and must be signed by such county treasurer, and such treasurer must keep a duplicate thereof on file in his office. Whenever any such tax receipt or treasurer's certificate is presented by a registered elector to the county clerk and recorder he shall enter his name in the poll book of electors entitled to vote on such question, and there shall be entered therein the date and number of the tax receipt or certificate, the county in which issued and a description of the property assessed to the elector and amount of taxes against the same, as contained in such receipt or certificate, and such elector shall thereupon be given the proper ballot and shall vote the same in exactly the manner as though his name appeared on such assessment roll for such county.

History: En. Sec. 1, Ch. 44, L. 1941.

23-308. (541) Privilege from arrest. Electors must in all cases, except treason, felony, or breach of the peace, be privileged from arrest during their attendance at elections, and in going to and returning therefrom.

History: En. Sec. 1183, Pol. C. 1895;
re-en. Sec. 464, Rev. C. 1907; re-en. Sec.
541, R. C. M. 1921. Cal. Pol. C. Sec. 1069.

Collateral References
Elections 233.
29 C.J.S. Elections § 215.

23-309. (542) Exempt from military duty on election day. No elector is required to perform military duty on the days of election, except in times of war or public danger.

History: En. Sec. 1184, Pol. C. 1895;
re-en. Sec. 465, Rev. C. 1907; re-en. Sec.
542, R. C. M. 1921. Cal. Pol. C. Sec. 1070.

23-310. (543) Idiot or insane. No idiot or insane person is entitled to vote at any election in this state.

History: En. Sec. 1185, Pol. C. 1895;
re-en. Sec. 466, Rev. C. 1907; re-en. Sec.
543, R. C. M. 1921. Cal. Pol. C. Sec. 1084.

Collateral References
Elections 59.
29 C.J.S. Elections § 16.

23-311. (544) Who are taxpayers. The payment of a tax upon property by any person assessed therefor on a county or city assessment roll next preceding the election at which a question is to be submitted to the vote of the taxpayers of the state, or to the vote of the taxpayers of such county or city, or any subdivision thereof, constitutes such person a taxpayer at such election.

History: En. Sec. 1188, Pol. C. 1895; re-en. Sec. 469, Rev. C. 1907; re-en. Sec. 544, R. C. M. 1921.

NOTE.—Since the constitutional amendment granting equal rights of suffrage to women, section 468 of the Revised Codes of Montana, 1907, has been omitted from this codification and the last line of section 23-311 as enacted has also been omitted.

Operation and Effect

Since chapter 47, Laws of 1929, impliedly repeals section 5278, Revised Codes, 1921 (since repealed), providing that only

taxpayers as defined by this section shall be entitled to vote on questions concerning the creation or increasing of indebtedness incident to a city water plant, it also supersedes this section, and a city no longer may require payment of taxes as a condition to the right of an elector on proposals to create or increase city indebtedness. *Weber v. City of Helena et al.*, 89 M 109, 116 et seq., 297 P 455.

Collateral References

Elections ⇨ 83.
29 C.J.S. Elections § 29.

CHAPTER 4

ELECTION PRECINCTS

- Section 23-401. Establishment of election precincts.
23-402. Change in boundaries of precinct.
23-403. City council to certify ward boundaries.
23-404. County surveyor to make map of precincts.
23-405. City council to prepare map of wards.
23-406. Board to designate place in precinct for holding elections.
23-407. Proceedings where place not designated, etc.

23-401. (545) Establishment of election precincts. The territorial unit for the conduct of elections shall be the election precinct. The board of county commissioners of each county shall establish a convenient number of election precincts therein having reference to equalizing the number of electors in the several precincts as nearly as possible. Precinct boundaries shall conform to the wards of incorporated cities of the first, second and third class and to the boundaries of school districts of the first class only, provided that any ward or school district may be divided into two or more precincts and any precinct may be divided into two or more polling places. In towns, or municipal corporations other than the cities of the first, second and third class, election precincts may, however, include two or more wards, or may comprise the territory included by one or more wards, together with contiguous territory lying outside the said incorporated towns.

History: En. Sec. 2, Ch. 113, L. 1911; amd. Sec. 2, Ch. 74, L. 1913; amd. Sec. 2, Ch. 122, L. 1915; re-en. Sec. 545, R. C. M. 1921; amd. Sec. 1, Ch. 25, L. 1929. Cal. Pol. C. Secs. 1127-1132.

References

Atkinson v. Roosevelt County et al., 71 M 165, 181, 227 P 811.

Collateral References

Elections ⇨ 46, 48.
29 C.J.S. Elections §§ 53, 54.

23-402. (546) Change in boundaries of precinct. The board of county commissioners may change the boundaries of precincts and create new or

consolidated established precincts, but no precinct shall be changed or created between the first day of January and the first day of December in any year during which a general election is to be held within the state of Montana. All changes, alterations, or modifications in precinct boundaries must be certified to the county clerk within three days after the order making same shall have been made. All election precincts shall be designated by numbers but may also be designated by distinctive names in addition to such numbers.

History: En. Sec. 3, Ch. 113, L. 1911; amd. Sec. 3, Ch. 74, L. 1913; amd. Sec. 3, Ch. 122, L. 1915; re-en. Sec. 546, R. C. M. 1921.

Collateral References

Elections 48.
29 C.J.S. Elections § 54.

References

Atkinson v. Roosevelt County et al., 71 M 165, 181, 227 P 811.

23-403. (547) City council to certify ward boundaries. The city council of all incorporated cities and towns within the state of Montana shall certify to the county clerk and ex officio registrar of the county within which such city or town is situated, a description of the boundaries of the several wards within such city or town, and in like manner shall certify any changes or alterations in such boundaries that may from time to time be made, within ten days after the same are made.

History: En. Sec. 4, Ch. 113, L. 1911; amd. Sec. 4, Ch. 74, L. 1913; amd. Sec. 4, Ch. 122, L. 1915; re-en. Sec. 547, R. C. M. 1921.

References

Weber v. City of Helena et al., 89 M 109, 123, 297 P 455.

23-404. (548) County surveyor to make map of precincts. The county surveyor of each county must, within ten days after the board of county commissioners shall have established or changed the boundaries of any election precincts within such county, deliver to the county clerk of the county a map correctly showing the boundaries of all precincts and school districts within the county as then existing.

History: En. Sec. 5, Ch. 113, L. 1911; amd. Sec. 5, Ch. 74, L. 1913; amd. Sec. 5, Ch. 122, L. 1915; re-en. Sec. 548, R. C. M. 1921.

References

Atkinson v. Roosevelt County et al., 71 M 165, 181, 227 P 811.

23-405. (549) City council to prepare map of wards. The city council of any incorporated city or town shall, within ten days after the ward lines of such city or town shall have been established or changed, deliver or cause to be delivered to the county clerk of said county a map correctly showing the boundaries of the wards within such city or town as then existing; such map shall also show all streets, avenues, and alleys by name, and the respective wards by numbers, with the ward boundaries clearly defined thereon.

History: En. Sec. 6, Ch. 113, L. 1911; amd. Sec. 6, Ch. 74, L. 1913; amd. Sec. 6, Ch. 122, L. 1915; re-en. Sec. 549, R. C. M. 1921.

References

Weber v. City of Helena et al., 89 M 109, 123, 297 P 455.

23-406. (550) Board to designate place in precinct for holding elections. The board must, at the session at which judges of election are ap-

pointed, make an order designating the house or place within the precinct where the election must be held.

History: En. Sec. 1243, Pol. C. 1895; re-en. Sec. 497, Rev. C. 1907; re-en. Sec. 550, R. C. M. 1921.

References

Atkinson v. Roosevelt County et al, 71 M 165, 181, 227 P 811.

Collateral References

Elections—203.
29 C.J.S. Elections § 193.
18 Am. Jur. 251, Elections, § 113.

23-407. (551) Proceedings where place not designated, etc. If the board fails to designate the house or place for holding the election, or if it cannot be held at the house or place designated, the judges of election, or a majority of those acting as such in the precinct must, two days before the election and by order, under their hand (copies of which they must at once post in three public places in the precinct), designate the house or place.

History: En. Sec. 1244, Pol. C. 1895; re-en. Sec. 498, Rev. C. 1907; re-en. Sec. 551, R. C. M. 1921.

Operation and Effect

Where a board of county canvassers refused to canvass election returns from a precinct on the ground that it appeared upon the face of the returns that the election had not been held at the place designated by the board of county commissioners, and on application for writ of mandate to compel them to act nothing was shown affirmatively by pleadings or otherwise that the judges of election at the precinct had not pursued the above section giving them authority to change

the place of election upon two days' notice if for any reason it cannot be held at the place appointed, it will be presumed that official duty was regularly performed by them and that they did change it, and the writ will issue commanding action. State ex rel. Moore v. Patch et al, 65 M 218, 225, 211 P 202.

References

Atkinson v. Roosevelt County et al, 71 M 165, 181, 227 P 811.

Collateral References

Elections—203.
29 C.J.S. Elections § 193.
18 Am. Jur. 251, Elections, §§ 113, 114.

CHAPTER 5

REGISTRATION OF ELECTORS

- Section** 23-501. County clerk as county registrar.
23-502. Registry book and card index—affidavit of voter—lost naturalization papers.
23-503. Method of registering.
23-504. Elector infirm or residing at a distance.
23-505. Notaries and justices of the peace—deputy registrars—compensation.
23-506. Penalty for violation of act.
23-507. Hours of registration—registry cards—duty of clerk.
23-508. Procedure when applicant not qualified at time of registration.
23-509. Transfer of registration within county.
23-510. Inquiry as to previous registrations—procedure.
23-511. Cancellation of registry for failure to vote—re-registration—exception of persons in military service.
23-512. Withdrawal from cancellation of registration cards of persons in military service.
23-513. Close of registration—procedure.
23-514. Printing and posting of lists of registered electors.
23-515. Poll-book—combining precinct registers in—when not furnished city or town.
23-516. Registration during period closed for election.
23-517. Cancellation of registrations.
23-518. Cancellation of registration cards, when.
23-519. Compensation of county clerks.
23-520. Copies of precinct registers.
23-521. Challenges and action to be taken thereon.

- 23-522. Residence, rules for determining.
- 23-523. Certificates of naturalization, presentation to registrar.
- 23-524. Voter to sign precinct register books.
- 23-525. Compelling entry of names in great register.
- 23-526. Name of voter must appear in copy of register—identification of voter.
- 23-527. Omission of name from poll-books—remedy.
- 23-528. Authority of deputy county clerk.
- 23-529. "Elector" defined.
- 23-530. "Election" defined.
- 23-531. Violation of act, penalty for.
- 23-532. Challenging of elector and administration of oath.
- 23-533. Acts constituting violation of law—penalty.
- 23-534. County commissioners to supply clerk with help.

23-501. (553) County clerk as county registrar. The county clerk of each county of the state of Montana is hereby declared to be ex officio county registrar of such county, and shall perform all acts and duties in this act provided without extra pay or compensation therefor. He shall have the custody of all registration books, cards, and papers herein provided for, and the register hereinafter provided for to be kept by said county clerk is hereby declared to be an official record of the office of the county clerk of each county.

History: En. Sec. 1, Ch. 113, L. 1911;
amd. Sec. 1, Ch. 74, L. 1913; amd. Sec. 1,
Ch. 122, L. 1915; re-en. Sec. 553, R. C. M.
1921. Cal. Pol. C. Secs. 1094-1119.

ex rel. Eagye v. Bawden, 51 M 357, 361,
152 P 761; State ex rel. Durland v.
Board of County Commrs., 104 M 21, 28,
64 P 2d 1060.

References

Cited or applied in State ex rel. Kehoe
v. Stromme, 49 M 25, 139 P 1002; State

Collateral References

Elections⇒100.
29 C.J.S. Elections § 42.

23-502. (554) Registry book and card index—affidavit of voter—lost naturalization papers. The official register of electors in each county shall be contained in a book designated "register," which book shall be so arranged in precincts and alphabetical divisions suitable to record the full and complete information given by each elector, and a card index of which the county clerk of such county shall at all times have the custody. The cards shall be four by six inches in size, of white calendar stock, and shall be so perforated that all cards in any drawer may be fastened in by a rod passing through such perforations, which rod shall be kept locked except when the clerk shall be making necessary changes in the register. The registry book herein provided shall be in such form as shall be designated by the secretary of state of the state of Montana. The registry card shall be substantially in the following form:

(Face.)

State of Montana, }
County of } ss.

Number	Date	Name	Sex
Where born	Age	Height Ft.-In.	Occupation
Naturalized when			Where

Residence	Postoffice	Sec.	Twp.	Rg.
Length of time in	Precinct	Ward	School Dist.	
State	County	City		
Date canceled	Date registered	Disability, if any		
Place where last registered				

State of Montana, }
County of } ss.

....., being duly sworn says: I am the elector whose name appears on the face of this card; the several statements thereon contained affecting my qualifications as an elector are true; I am able to mark my ballot (or I am unable to mark my ballot by reason of the physical disabilities on this card specified), and I am not registered elsewhere within the state of Montana and claim no right to vote elsewhere than in the precinct on this card specified, so help me God.

Subscribed and sworn to before me this day of, 19....

County Clerk and Ex-officio Registrar.

By.....Deputy.

(Back.)

Affidavit of Lost Naturalization Papers.

State of Montana, }
County of } ss.

....., being duly sworn on oath, says: I am the elector named on the face of this card; I am a naturalized citizen of the United States; my certificate of naturalization is lost or destroyed, or beyond my present reach, and I have no certified copy thereof; I came to the United States in the year.....; I was admitted to citizenship in the state (or territory) of county of, by the court during the year; I last saw my certificate of naturalization, or a certified copy thereof, at

Subscribed and sworn to before me this day of, 19....

County Clerk and Ex-officio Registrar.

ByDeputy.

History: En. Sec. 7, Ch. 113, L. 1911; amd. Sec. 7, Ch. 74, L. 1913; amd. Sec. 7, Ch. 122, L. 1915; re-en. Sec. 554, R. C. M. 1921.

Collateral References

Elections 106, 110.

29 C.J.S. Elections §§ 39, 46, 47.

18 Am. Jur. 231, Elections, §§ 82 et seq.

Validity of statute requiring information as to age, sex, residence, etc., as a condition of registration. 14 ALR 260.

Propriety of test or question asked applicant for registration as voter other than formal questions relating to specific conditions of his right to registration. 76 ALR 1238.

Constitutionality of statutes in relation to registration before voting at election or primary. 91 ALR 349.

Non-registration as affecting legality of votes cast by persons otherwise qualified. 101 ALR 657.

23-503. (555) Method of registering. Any elector residing within the county may register by appearing before the county clerk and ex officio registrar and making correct answers to all questions propounded by the county clerk touching the items of information called for by such registry card, and by signing and verifying the affidavit or affidavits on the back of such card. Any elector serving in the armed services of the United States or in the merchant marines of the United States, or who is a civilian outside the United States, officially attached to and serving with the armed forces of the United States, may register by appearing before any commissioned officer, and make correct answers to all questions called for by such registry card, and by signing and verifying the affidavit or affidavits on the back of such card, and by mailing said card to the county clerk of the county in which the said voter resides.

If any person shall falsely personate another and procure the person so personated to be registered, or if any person shall represent his name to the county clerk or to the registration clerk or to any other person qualified to register an elector, to be different from what it actually is, and cause such name to be registered, or if any person shall cause any name to be placed upon the registry lists otherwise than in the manner provided in this act, he shall be guilty of a felony, and upon conviction be imprisoned in the state penitentiary for not less than one (1) nor more than three (3) years.

History: En. Sec. 8, Ch. 122, L. 1915; re-en. Sec. 555, R. C. M. 1921; amd. Sec. 4, Ch. 172, L. 1937; amd. Sec. 1, Ch. 83, L. 1953.

Collateral References

Elections 98, 106, 312.

29 C.J.S. Elections §§ 39, 40, 46, 326.

23-504. (556) Elector infirm or residing at a distance. If any elector resides more than ten miles distant from the office of the county clerk, he may register before the deputy registrar within the precinct where such elector resides. If by reason of physical infirmity the elector is unable to appear before the county clerk or any deputy registrar, he may send written notice to the county clerk or to the deputy registrar of such disability, with the request that his registration be made at his residence. Upon receipt of such notice and request it shall be the duty of the county clerk or deputy registrar, as the case may be, to make the registration of such elector at his residence; provided, that no greater sum than twenty-five cents may be charged or received by any officer or person for taking the registration of the elector herein provided for; and provided further, that no officer or

person shall be entitled to receive from any county in the state of Montana any charge for expenses incurred by reason of the provisions of this section.

History: En. Sec. 15, Ch. 74, L. 1913; amd. Sec. 9, Ch. 122, L. 1915; re-en. Sec. 556, R. C. M. 1921.

Collateral References

Elections ⇐ 106.
29 C.J.S. Elections §§ 39, 46.

23-505. (557) Notaries and justices of the peace—deputy registrars—compensation. All notaries public and justices of the peace are designated as deputy registrars in the county in which they reside, and may register electors residing in any precinct within the county and shall receive as compensation for their services the sum of twenty-five cents (25c) for each elector registered by them, provided that they shall receive no compensation for their services where the elector resides less than ten (10) miles from the county courthouse. The county commissioners shall appoint a deputy registrar, other than notaries public and justices of the peace, for each precinct in the county. Such deputy registrar shall be a qualified, taxpaying resident elector in the precinct for which he is appointed and shall register electors in that precinct, and shall receive as compensation for his services the sum of twenty-five cents (25c) for each elector registered by him. Each deputy registrar shall forward by mail, within two (2) days, all registration cards filled out by him to the county clerk and recorder.

History: En. Sec. 10, Ch. 122, L. 1915; amd. Sec. 1, Ch. 38, L. 1917; re-en. Sec. 557, R. C. M. 1921; amd. Sec. 5, Ch. 172, L. 1937; amd. Sec. 1, Ch. 51, L. 1941; amd. Sec. 1, Ch. 80, L. 1955.

Collateral References

Elections ⇐ 100.
29 C.J.S. Elections § 42.

23-506. Penalty for violation of act. Any person who shall make false answers, either for himself or another, or shall violate or attempt to violate any of the provisions of this act, or knowingly encourage another to violate the same, or any public officer or officers, employees, deputies, or assistants, or other persons whomsoever, upon whom any duty is imposed by this act, or any of its provisions, who shall neglect such duty, or mutilate, destroy, secrete, alter or change any such registry books, cards or records required, or shall perform it in such way as to hinder the objects and purposes of this act, shall be deemed guilty of a felony, shall, upon conviction thereof, be punished by imprisonment in the state prison for a period of not less than one (1) year or more than ten (10) years, and if such person be a public officer, shall also forfeit his office, and never be qualified to hold public office, either elective or appointive, thereafter.

History: En. Sec. 6, Ch. 172, L. 1937.

Collateral References

Elections ⇐ 312.
29 C.J.S. Elections § 326.

23-507. (558) Hours of registration—registry cards—duty of clerk. The office of the county clerk shall be open for registration of voters between the hours of nine a. m. and five p. m. on all days except legal holidays. Registry cards shall be numbered consecutively in the order of their receipt at the office of the county clerk; provided, however, that electors who are registered upon the registry books in use in any county prior to the passage and approval of this law shall retain upon their registry cards the same number as they have severally had upon such books; and provided also

that such electors need not again appear at the office of the county clerk to register, but the county clerk is hereby authorized to fill out from such registry books registry cards for all electors entitled to vote at the time of the passage and approval of this law, transcribing from such books the data called for by such cards. The cards so filled out from the registry books shall be marked "transcribed" by the county clerk, and shall constitute part of the official register, and shall entitle the elector represented by each such card to vote in the same manner as if the card had been filled out, signed and verified by such elector. The county clerk shall classify registry cards according to the precincts in which the several electors reside, and shall arrange the cards in each precinct in alphabetical order. The cards for each precinct shall be kept in a separate filing case or drawer which shall be marked with the number of the precinct. The county clerk shall, immediately after filling out the card index or registry cards as herein provided, enter upon the official register of the county in the proper precinct the full information given by said elector.

History: En. Sec. 11, Ch. 122, L. 1915;
re-en. Sec. 558, R. C. M. 1921.

Collateral References

Elections⇒105, 109, 110.
29 C.J.S. Elections §§ 39, 47.

23-508. (559) Procedure when applicant not qualified at time of registration. If any applicant for registration applies to be registered who has not resided within the state of Montana, or the county or city, for the required length of time, and who shall be entitled to and is qualified to register on or before the day of election, provided he answers the question of the county clerk in a satisfactory manner, and it is made to appear to the county clerk that he will be entitled to become a qualified elector by the date upon which the election is to be held, the county clerk shall accept such registration. If any person applies to be registered who is not a citizen of the United States, but states that he will be qualified to be registered as a citizen of the United States before the date upon which the election is to be held, the county clerk shall accept such registration, but shall place opposite the name of such person the words, "to be challenged for want of naturalization papers," and such person shall not be entitled to vote unless he exhibits to the judges of election his final naturalization papers.

History: En. Sec. 12, Ch. 113, L. 1911;
amd. Sec. 12, Ch. 74, L. 1913; amd. Sec.
12, Ch. 122, L. 1915; re-en. Sec. 559, R. C.
M. 1921.

Collateral References

Elections⇒106.
29 C.J.S. Elections §§ 39, 46.

23-509. (560) Transfer of registration within county. Every elector, on changing his residence from one precinct to another within the same county, may cause his registry card to be transferred to the register of the precinct of his new residence, by executing in person a registry card as described in section 23-502 before the deputy registrar of the new precinct or before a notary public or justice of the peace residing within the county, provided that the deputy registrar, notary public or justice of the peace will receive no compensation for this service, or by a request in writing to the county clerk of such county, in the following form:

I, the undersigned elector, having changed my residence from Precinct No. _____ to Precinct No. _____ in the County of _____, State of Montana, herewith make application to have my registry card transferred to the precinct register of the precinct of my present residence. My registration number is _____.

Dated at _____, on the _____ day of _____, 19____.

Whenever it shall be more convenient for any elector residing outside of an incorporated city or town to vote in another precinct in the same political township in the county, such elector may cause his registry card to be transferred from the precinct of his residence to such other precinct, by filing in the office of the county clerk of such county, at least thirty (30) days prior to any election, a request in writing in the following form:

I, the undersigned elector, herewith make application to have my registry card transferred from Precinct No. _____, to the register of Precinct No. _____, in the County of _____, State of Montana. The reason why it is more convenient for me to vote in said Precinct No. _____ is that _____

Dated at _____ on the _____ day of _____, 19____.

Where the elector desires to change his place of registration within a county by a request in writing to the county clerk as provided above, the county clerk shall compare the signature of the elector upon such written request, with the signature upon the registry card of the elector as indicated, and may question the elector as to any of the information contained upon such registry card, and if the county clerk is satisfied concerning the identity of the elector and his right to have such transfer made, he shall endorse upon the registry card of such elector the date of the transfer and the precinct to which transferred, and shall file said card in the register of the precinct of the elector's present residence, or of the precinct to which he has requested that his registry card be transferred, and the county clerk shall in each case make a transfer of the elector's name, together with all data connected therewith, to the proper precinct in the register.

Where the elector changes his place of registration within a county by executing a new registry card in the presence of a deputy registrar, notary public or justice of the peace as provided in the first paragraph of this section, the county clerk shall file said new card in the register of the precinct of the elector's present residence and shall make a transfer of the elector's name, together with all data connected therewith, to the proper precinct in the register. The old registry card shall be marked "cancelled" and placed in the "cancelled file" described in section 23-511.

History: En. Sec. 17, Ch. 113, L. 1911; amd. Sec. 17, Ch. 74, L. 1913; amd. Sec. 13, Ch. 122, L. 1915; amd. Sec. 1, Ch. 29, L. 1919; re-en. Sec. 560, R. C. M. 1921; amd. Sec. 2, Ch. 80, L. 1955.

Collateral References

Elections 119.
29 C.J.S. Elections § 52.
18 Am. Jur. 239, Elections, § 93.

23-510. (561) Inquiry as to previous registrations—procedure. That in the case of all future registrations, as required by the election laws of

tion was made, and the registration card of any elector who thus re-registers shall be filed by the county clerk in the official register in the same manner as original registration cards are filed. The county clerk shall, at the same time, cancel, by drawing a red line through the entry thereof, the name of all such electors who have failed to vote at such election.

In the case of any elector who, by reason of his or her active service in the land or naval forces of the United States, including the members of the army nurse corps, the navy nurse corps, the women's navy reserve, the women's army auxiliary corps, and such other branches of the land and naval forces as may be organized hereafter by the government of the United States, shall fail to vote, his or her registry card shall not be cancelled, provided that, prior to close of registration before any election to be held in the state of Montana, at least two (2) registered electors of the county in which such elector serving in the land or naval forces of the United States, including those persons actually engaged in the service of the American national red cross association, or the united service organizations or any similar organizations auxiliary to the land and naval forces, recognized by the government of the United States was registered at the time of such election furnish the county clerk with an affidavit or affidavits, setting forth the affiants are personally acquainted with such elector and are informed and have reason to believe such elector was engaged in active service in the land or naval forces of the United States, including members of the army nurse corps, the navy nurse corps, the women's navy reserve, the women's army auxiliary corps, and such other branches of the land and naval forces as may be organized hereafter by the government of the United States also including persons engaged in the actual service of the American national red cross association, or the united service organizations or any similar organizations auxiliary to the land and naval forces, recognized by the government of the United States on the day of such election and his residence is still within the county where he is registered; provided further, however, this shall not apply to those registration cards which have been cancelled for any of the causes designated under section 23-518.

History: En. Sec. 15, Ch. 122, L. 1915; 1060; Taylor v. Taylor, 125 M 341, 238 P re-en. Sec. 562, R. C. M. 1921; amd. Sec. 2d 904, 906.
1, Ch. 147, L. 1937; amd. Sec. 1, Ch. 144, L. 1941; amd. Sec. 1, Ch. 177, L. 1943.

Collateral References

Elections 108.

29 C.J.S. Elections § 48.

References

State ex rel. Durland v. Board of County Commrs., 104 M 21, 28, 64 P 2d

23-512. Withdrawal from cancellation of registration cards of persons in military service. It shall be the duty of the county clerk of each county, on or before the close of registration before any election to be held in the state of Montana following the general election held in November of 1942, to withdraw from the "cancelled file" the registration card of any person serving in the land or naval forces of the United States, including the members of the army nurse corps, the navy nurse corps, the women's navy reserve, and the women's army auxiliary corps, and such other branches of the land and naval forces as may be organized hereafter by the government of the United States including persons engaged in the actual service of the

American national red cross association, or the united service organizations or any similar organizations auxiliary to the land and naval forces recognized by the government of the United States whose registry card has been removed from the official register since the date of the general election held in November of 1942, and return such card to the official register and enter the name of such elector upon the proper registration rolls, provided that—on or before the close of registration before any election to be held in the state of Montana following the general election held in November of 1942—the county clerk is furnished an affidavit or affidavits by at least two (2) registered electors of the county in which such elector serving in the land or naval forces of the United States, including persons of the army nurse corps, the navy nurse corps, the women's naval reserve, the women's army auxiliary corps, and such other branches of the land and naval forces as may be organized hereafter by the government of the United States including persons engaged in the actual service of the American national red cross association, or the united service organizations or any similar organizations auxiliary to the land and naval forces recognized by the government of the United States was registered at the time of such election, setting forth the affiants are personally acquainted with such elector and are informed and have reason to believe such elector was engaged in active service in the land or naval forces of the United States, including persons of the army nurse corps, the navy nurse corps, the women's navy reserve, the women's army auxiliary corps, and such other branches of the land and naval forces as may be organized hereafter by the government of the United States including persons engaged in the actual service of the American national red cross association, or the united service organizations or any similar organizations auxiliary to the land and naval forces recognized by the government of the United States on the day of such election and his residence is still within the county where he is registered; provided further, however, this shall not apply to those registration cards which have been cancelled for any of the causes designated under section 23-518.

History: En. Sec. 2, Ch. 177, L. 1943.

23-513. (566) Close of registration—procedure. The county clerk shall close all registration for the full period of forty-five days prior to and before any election. He shall immediately transmit to the secretary of state a certificate showing the number of voters registered in each precinct in said county. The county clerk of each county must cause to be published in a newspaper within his county, having a general circulation therein, for thirty days before which time when such registration shall be closed for any election, a notice signed by him to the effect that such registration will be closed on the day provided by law, and which day shall be specified in such notice; and must also state that electors may register for the ensuing election by appearing before the county clerk at his office, or by appearing before a deputy registrar or before any notary public or justice of the peace in the manner provided by law. The publication of such notice must continue for the full period of thirty days. At least thirty days before the time when the official register is closed for any election, the county clerk shall cause to be posted, in at least five conspicuous places in each voting

precinct at such election, notice of the time when the official register will close for such election.

History: En. Sec. 18, Ch. 113, L. 1911; amd. Sec. 18, Ch. 74, L. 1913; amd. Sec. 16, Ch. 122, L. 1915; amd. Sec. 1, Ch. 97, L. 1919; re-en. Sec. 566, R. C. M. 1921.

Operation and Effect

Under this section a period of not less than sixty days must elapse between the time an election is called and the time it is held. State ex rel. Eagye v. Bawden, 51 M 357, 361, 152 P 761.

This section impliedly adopted by chapter 47, Laws of 1929 (84-4711) and sections 23-514, 23-515, and 23-519, incorporated therein by reference, relating to the

duties of the county clerk in connection with the registration of electors, control in an election on proposals to create or increase city indebtedness. Weber v. City of Helena, 89 M 109, 112 et seq., 297 P 455.

References

Cited or applied in State ex rel. Cryderman v. Wienrich, 54 M 390, 399, 170 P 942; State ex rel. Van Horn v. Lyon, 119 M 212, 173 P 2d 891, 892.

Collateral References

Elections—105.
29 C.J.S. Elections § 39.

23-514. (567) Printing and posting of lists of registered electors. The county clerk shall, at least 15 days preceding any municipal primary nominating election in towns and cities, and at least twenty (20) days preceding any other election, cause to be printed and posted a list of all electors entitled to be registered as shown by the official register of the county, and who are on the precinct registers as entitled to vote in the several precincts of such county, city or town, or school district of the first class, provided, that if the city clerk of any city or town shall, in writing, certify to the county clerk, not less than twenty-five (25) days before the date fixed by law for the holding of any primary nominating election, that no petitions for nomination under the direct primary election law for any office to be filled at the next ensuing annual city election have been filed with such city or town clerk, not less than thirty (30) days before the date fixed by law for the holding of the primary nominating election, then the county clerk shall not cause to be printed or posted such list of registered electors for such city or town. Such printed list of registered electors shall contain the name of the elector in full, together with his residence, giving the number and street, or the name of the house, (.....) and in all cases where the elector resides outside of the city or town, such printed list shall contain the post office address of such elector, as shown by the official register card of the elector, and the registry number. The expense of printing said list shall be paid by said county, city or town, or school district, in which the election is to be held. The county clerk shall cause to be posted, not less than fifteen (15) days before any municipal primary nominating election, and not less than twenty (20) days before any other election, as in this act provided for, at least five (5) copies of such printed registry list in at least five (5) conspicuous places within said precinct, a copy of the list of registered voters herein provided for, and shall retain sufficient number of said printed lists of registered voters in his office as may be necessary for the convenience of the public. He shall furnish to any qualified elector of any county, city or town or school district applying therefor a copy of the same, provided, that where the list herein provided for has been printed and posted for any primary election, the same may be used for the election proper, following a posting in connection therewith, at the

time provided for in this section, a supplemental list giving the names of electors who may have registered after the first list was prepared.

History: Ap. p. Sec. 24, Ch. 113, L. 1911; amd. Sec. 24, Ch. 74, L. 1913; amd. Sec. 17, Ch. 122, L. 1915; amd. Sec. 2, Ch. 97, L. 1919; amd. Sec. 1, Ch. 235, L. 1921; re-en. Sec. 567, R. C. M. 1921; amd. Sec. 1, Ch. 61, L. 1933; amd. Sec. 1, Ch. 167, L. 1945.

References

Cited or applied in State ex rel. Cry-

derman v. Wienrich, 54 M 390, 399, 170 P 942; Weber v. City of Helena, 89 M 109, 112 et seq., 297 P 455; State ex rel. Fisher v. School Dist. No. 1, 97 M 358, 365, 34 P 2d 522; State ex rel. Wulf v. McGrath, 111 M 96, 100, 106 P 2d 183.

Collateral References

Elections 109.
29 C.J.S. Elections § 47.

23-515. (568) Poll-book—combining precinct registers in—when not furnished city or town. During the time intervening between the closing of the official register and the day of the ensuing election, the county clerk shall prepare for each precinct a book to be known as the “poll-book” which shall be for the use of the clerks and judges of election in each such precinct. Such books shall be arranged for the listing of the names of the electors in alphabetical divisions, each division to be composed of ruled columns with appropriate headings, under which the information contained upon the registry card of each elector shall be transcribed, excepting the oath of the elector, and the certified copy of the poll-books so prepared shall be delivered to the judges of the election at or prior to the opening of the polls in each precinct. Where the precincts in municipal elections, or in elections in school districts of the first class, include more than one county precinct, the county clerk shall combine into one poll-book the names of all electors in the several precinct registers of the precincts of which such municipal or school district precinct is composed. The county clerk shall omit from the list of names of all certified voters so inserted in the poll-book herein provided for, the names and registry of all electors which it is the duty of the county clerk to cancel under the provisions of section 23-518, provided that the requirements contained in the provisions of said section shall have been brought to the attention of the county clerk not less than twenty days preceding the election. If the city clerk of any city or town shall, in writing, certify to the county clerk, not less than twenty-five days before the date fixed by law for the holding of any primary nominating election, that no petitions for nomination under the direct primary election law for any office to be filled at the next ensuing annual city election have been filed with such city clerk, not less than thirty days before the date fixed by law for the holding of the primary nominating election, then the county clerk shall not prepare for the city any poll-book or poll-books for that year.

History: En. Sec. 23, Ch. 113, L. 1911; amd. Sec. 23, Ch. 74, L. 1913; amd. Sec. 18, Ch. 122, L. 1915; amd. Sec. 3, Ch. 97, L. 1919; re-en. Sec. 568, R. C. M. 1921; amd. Sec. 2, Ch. 61, L. 1933.

References

Weber v. City of Helena, 89 M 109, 112 et seq., 297 P 455.

Collateral References

Elections 212.
29 C.J.S. Elections § 197.

23-516. (569) Registration during period closed for election. Whenever the period during which the official registry is closed preceding any election shall occur during the time within which any elector is entitled to

register for another election, such elector shall be permitted to register for such other election, but the county clerk shall retain his registry card in a separate file until the official register is again open for filing of cards, at which time all cards in such temporary file shall be placed in their proper position in the official register.

History: En. Sec. 19, Ch. 122, L. 1915;
re-en. Sec. 569, R. C. M. 1921.

Collateral References

Elections 106.

29 C.J.S. Elections § 39.

23-517. Cancellation of registrations. In all counties within the state of Montana, the county clerk and ex officio "registrar" shall, within five (5) days after the first day of June, 1937, cancel all registrations of electors in the county and shall burn all "card indexes," "registry cards" and "affidavits" theretofore executed and signed by any elector for the purpose of registration; also, all copies of the registration books used at any elections theretofore held and shall preserve the "register" theretofore used as a permanent file of the office of the county clerk.

The county clerk must cause to be published in a newspaper of general circulation, published in the county, a notice which shall state that all registrations of electors will be cancelled as of the first day of June, 1937, and that duly qualified electors desiring to vote at any subsequent election in the state of Montana, are required to register in the manner and form provided for under the general registration laws, and laws amendatory thereto, of the state of Montana. Said notice shall be published once a week for a period of four consecutive weeks. Failure to publish said notice shall not affect a registration of electors, nor of any election thereafter held.

History: En. Sec. 1, Ch. 172, L. 1937.

Collateral References

Elections 108.

29 C.J.S. Elections § 48.

References

Wilson v. Hoisington, 110 M 20, 22, 98
P 2d 369.

23-518. (570) Cancellation of registration cards, when. The county clerk must cancel any registry card in the following cases:

1. At the request of the party registered.
2. When he has personal knowledge of the death or removal from the county of the person registered, or when duly authenticated certificate of the death of any elector is filed in the names of vital statistics in his office.
3. When there is presented and filed with the county clerk the separate affidavit of three qualified registered electors residing within the precinct, which affidavit shall give the name of such elector, his registry number and his residence, and which affidavit shall show that of the personal knowledge of the affiant, that any person registered does not reside or has removed from the place designated as the residence of such elector.
4. When the insanity of the elector is legally established.
5. Upon the production of a certified copy of a final judgment of conviction of any elector of felony.
6. Upon the production of a certified copy of the judgment of any court directing the cancellation to be made.
7. Upon the cancellation of the registration of any elector as herein provided, the county clerk shall immediately remove from the official register

herein provided for the registry of voters and shall deface the name of such elector on the official register by drawing a line through said entry in red ink and the county clerk shall mark the registry card of such elector across the face thereof in red ink with the word "cancelled" and shall place such cancelled cards with the "cancelled file," as provided for in section 23-511.

All persons whose names are so removed, except as provided in section 23-517, and stricken from the said registration books, card indexes, and register of electors, shall within forty-eight hours thereafter, be notified by the county clerk in writing of such removal, by sending a notice to such person to his or her post-office address, as appearing on such registration books, card indexes, and register of electors. If any persons, whose names are so removed, can and do prove to the county clerk that they are in fact citizens of the United States and otherwise qualified to vote, as provided by law of the state of Montana, then, and in that case, they shall be entitled to re-register as voters.

History: En. Sec. 19, Ch. 113, L. 1911; amd. Sec. 19, Ch. 74, L. 1913; amd. Sec. 20, Ch. 122, L. 1915; amd. Sec. 4, Ch. 97, L. 1919; re-en. Sec. 570, R. C. M. 1921; amd. Sec. 2, Ch. 172, L. 1937.

Collateral References

Elections—108.
29 C.J.S. Elections § 48.

23-519. (571) Compensation of county clerks. The county clerks shall receive, for the use and benefit of the county, from every city or town, or from every school district of the first class, (to which the poll books referred to in the last section have been furnished), the sum of three (\$0.03) cents for each and every name entered in such poll books, and in addition he shall receive in like manner the amount of the actual expense incurred in printing and posting the lists of electors, and in publishing the notices required by this law, and any other expense incurred on account of any such municipal or school district election. It shall be the duty of the city or town council, or board of school trustees, to order a warrant drawn for such sum as may be due to the county clerk under the provisions of this section, within thirty (30) days after the presentation of the account to them by said county clerk, provided, however, that in event of the election of candidates at municipal primary elections, as provided for in 11-3113, and no general municipal election is required to be held, the county clerk shall prepare no poll books for such general municipal election and shall make no charge therefor; provided further, that in elections of school districts of the first class if only as many candidates are nominated as there are vacancies to be filled, the county clerk shall furnish no poll books and make no charge therefor to such school district.

It shall be the duty of the city clerk or the clerk of the school district to notify the county clerk in such case as above mentioned, where no poll books are required, immediately after the facts become known to the city council or the board of trustees of the school district, which makes unnecessary the furnishing of such poll books.

History: En. Sec. 29, Ch. 113, L. 1911; amd. Sec. 29, Ch. 74, L. 1913; amd. Sec. 21, Ch. 122, L. 1915; re-en. Sec. 571, R. C. M. 1921; amd. Sec. 1, Ch. 71, L. 1935.

References

Weber v. City of Helena, 89 M 109, 112 et seq., 297 P 455.

Collateral References

Counties↯78(1); Elections↯212.

20 C.J.S. Counties § 117; 29 C.J.S. Elections § 197.

23-520. (572) Copies of precinct registers. The county clerk shall furnish to any person or persons who in writing may so request, a copy of the official precinct registers of any county, city or school district precinct, and upon delivery thereof shall charge and collect for the use and benefit of the county the sum of five cents for each and every name entered in such official precinct register.

History: En. Sec. 30, Ch. 113, L. 1911; amd. Sec. 30, Ch. 74, L. 1913; amd. Sec. 22, Ch. 122, L. 1915; re-en. Sec. 572, R. C. M. 1921.

Collateral References

Elections↯111.

29 C.J.S. Elections § 50.

23-521. (573) Challenges and action to be taken thereon. At any time not later than the tenth day prior to any election, a challenge may be filed with the county clerk, signed by a qualified elector in writing, and duly verified by the affidavit of the elector, that the elector designated therein is not entitled to register. Such affidavit shall state the grounds of challenge, objection and disqualification. The county clerk shall file the affidavit of challenge in his office as a record thereof. The county clerk must deliver a true and correct copy of any and all of such affidavits so filed, challenging the right of any elector to vote who has been so registered at the same time, and together with the copy of the precinct registers and check lists, and other papers required by this act to be delivered to the judges of election, as in this act provided, and he must write distinctly opposite to the name of any person to whose qualification as an elector objections may be thus made, the words, "to be challenged." It shall be the duty of the judges of election, if on election day such person who has been objected to and challenged applies to vote, to test, under oath, his qualifications. Notwithstanding the elector is registered, his right to vote may be challenged on the day of election by any qualified registered elector, orally stating, to the judges of election, the grounds of such objection or challenge to the right of any registered elector to vote.

It is the duty of the judges of election, when it appears that any elector offers to vote and is either challenged by a duly qualified registered elector, on election day, or if an affidavit of objection to the right of such elector to vote has been filed with the county clerk and the copy of the precinct registers furnished to the judges of election have indorsed thereon, opposite to the name of such elector, "to be challenged," to test the qualifications of the elector and ask any questions that such judges may deem proper, and shall compare the answers of the elector to such questions with the entries in the precinct register books, and if it be found that said elector is disqualified, or that the answers given by such elector to the questions propounded by the judges do not correspond to the entry in the precinct registers, or that said elector is disqualified from any cause under the law, or if he refuses to take an oath as to his qualifications, he shall not be permitted to vote. The judges of election, in their discretion, may require such elector to produce before them one or more freeholders of the county, as they may deem necessary, and have them examined under oath as to the qualifications of the elector.

History: En. Sec. 20, Ch. 113, L. 1911; amd. Sec. 20, Ch. 74, L. 1913; amd. Sec. 23, Ch. 122, L. 1915; re-en. Sec. 573, R. C. M. 1921.

References

Weber v. City of Helena, 89 M 109, 125, 297 P 455.

Collateral References

Elections 223.
29 C.J.S. Elections § 209.

23-522. (574) Residence, rules for determining. For the purpose of registration or voting, the place of residence of any person must be governed by the following rules as far as they are applicable:

1. That place must be considered and held to be the residence of a person in which his habitation is fixed, and to which, whenever he is absent, he has the intention of returning.

2. A person must not be held to have gained or lost a residence by reason of his presence or absence while employed in the service of the United States, or of this state, nor while a student at any institution of learning, nor while kept at any almshouse or other asylum at the public expense, nor while confined in any public prison, nor while residing on any military reservation.

3. No soldier, seaman, or marine in the army or navy of the United States shall be deemed a resident of this state in consequence of being stationed at any military or naval place within the same. No person shall be deemed to have acquired a residence in the state of Montana by reason of being employed or stationed at any United States Civilian Conservation Corps Camp within the state of Montana or at any transient camp maintained for relief purposes by the government of the United States within the state of Montana.

4. A person must not be considered to have lost his residence who leaves his home to go into another state, or other district of this state, for temporary purposes merely with the intention of returning, provided he has not exercised the right of the election franchise in said state or district.

5. A person must not be considered to have gained a residence in any county into which he comes for temporary purposes merely without the intention of making such county his home.

6. If a person removes to another state with the intention of making it his residence, he loses his residence in this state.

7. If a person removes to another state with the intention of remaining there for an indefinite time, and as a place of present residence, he loses his residence in this state, notwithstanding he entertains an intention of returning at some future period.

8. The place where a man's family resides is presumed his place of residence, but any man who takes up or continues his abode with the intention of remaining, or a place other than where his family resides, must be regarded as a resident of the place where he so abides.

9. A change of residence can only be made by the act of removal joined with intent to remain in another place. There can only be one residence. A residence cannot be lost until another is gained.

10. The term of residence must be computed by including the day of election.

History: En. Sec. 21, Ch. 113, L. 1911; amd. Sec. 21, Ch. 74, L. 1913; amd. Sec. 24, Ch. 122, L. 1915; amd. Sec. 1, Ch. 58, L. 1919; re-en. Sec. 574, R. C. M. 1921; amd. Sec. 1, Ch. 25, L. 1935. Cal. Pol. C. Sec. 1239.

Inapplicable to Licensing of Automobiles

This section, prescribing the conditions determining the right to vote with respect to residence of the voter, held to have no bearing upon the situs of one's property (an automobile) or the ownership thereof for purpose of taxation, or licensing. *Valley County v. Thomas*, 109 M 345, 386, 97 P 2d 345.

Operation and Effect

Subdivision 8 of this section is in reality a rule of evidence. *Carwile v. Jones*, 38 M 590, 602, 101 P 153.

The residence of a voter is to be deter-

mined from his acts and intent; but this fact, like any other fact involved in a civil action or proceeding, may be established by circumstantial evidence, and any declarations of the voter touching the subject, if a part of the *res gestae*, or any declarations in disparagement of his right to vote, if made at or before the election, may be received in evidence. *Sommers v. Gould*, 53 M 538, 544, 165 P 599.

References

Cited or applied as section 21, chapter 113, Laws of 1911, before amendment, in *Stephens v. Nacey*, 49 M 230, 237, 141 P 649; *State ex rel. Johnson v. Kassing*, 74 M 25, 30, 238 P 582; *Wilson v. Hoisington*, 110 M 20, 24, 98 P 2d 369.

Collateral References

Elections ⇨ 72.

29 C.J.S. Elections § 20.

18 Am. Jur. 216, Elections, §§ 56 et seq.

23-523. (575) Certificates of naturalization, presentation to registrar.

When a naturalized citizen applies for registration his certificate of naturalization, or a certified copy thereof, must be produced and stamped, or written in ink by the registry agent, with such registry agent's name and the year and day and county where presented; but if it satisfactorily appears to the registry agent, by the affidavit of the applicant (and the affidavit of one or more credible electors as to the credibility of such applicant when deemed necessary), that his certificate of naturalization, or a certified copy thereof, is lost or destroyed, or beyond the reach of the applicant for the time being, said registry agent must register the name of said applicant, unless he is by law otherwise disqualified; but in case of failure to produce the certificate of naturalization, or a certified copy thereof, the registry agent must propound the following questions:

1. In what year did you come to the United States?
2. In what state or territory, county, court, and year were you finally admitted to citizenship?
3. Where did you last see your certificate of naturalization, or a certified copy thereof?

History: En. Sec. 22, Ch. 113, L. 1911; amd. Sec. 22, Ch. 74, L. 1913; amd. Sec. 25, Ch. 122, L. 1915; re-en. Sec. 575, R. C. M. 1921.

Collateral References

Elections ⇨ 106

29 C.J.S. Elections § 46.

23-524. (576) Voter to sign precinct register books. The judges of election in each precinct, at every general or special election, shall, in the precinct register book, which shall be certified to them by the county clerk, mark a cross (X) upon the line opposite to the name of the elector, before any elector is permitted to vote the judges of election shall require the elector to sign his name upon one of the precinct register books, designated by the county clerk for that purpose, and in a column reserved in the said precinct books for the signature of electors. If the elector is not able to sign his name he shall be required by the judges to produce two free-

holders who shall make an affidavit before the judges of election, or one of them, in substantially the following form:

State of Montana,)
County of) ss.

"We, the undersigned witnesses, do swear that our names and signatures are genuine, and that we are each personally acquainted with _____, (the name of the elector) and that we know that he is residing at _____, and that we believe that he is entitled to vote at this election, and that we are each freeholders in the county," which affidavit shall be filed by the judges, and returned by them to the county clerk, with the return of the election; one of the judges shall thereupon write the elector's name, and note the fact of his inability to sign, and the names of the two freeholders who made the affidavit herein provided for. If the elector fails or refuses to sign his name and if unable to write fails to procure two freeholders who will take the oath herein provided, he shall not be allowed to vote. Immediately after the election and canvass of the returns, the judges of election shall deliver to the county clerk the copy of said official precinct register sealed, with the election returns and poll-book, which have been used at said election.

History: En. Sec. 26, Ch. 113, L. 1911; amd. Sec. 26, Ch. 74, L. 1913; amd. Sec. 26, Ch. 122, L. 1915; re-en. Sec. 576, R. C. M. 1921.

Operation and Effect

Held, that failure of the election judges of a precinct to require the electors to sign the registry books before voting at

a primary election, was the fault of the judges and not of the electors, and that therefore their votes were legal and properly counted. *Thompson v. Chapin*, 64 M 376, 383 et seq., 209 P 1060.

Collateral References

Elections⇒212.
29 C.J.S. Elections § 197.

23-525. (577) Compelling entry of names in great register. In any action or proceeding instituted in a district court to compel the county clerk to make and enter the name of any elector in the precinct register, as many persons may be joined as plaintiffs for cause of action and as many persons as there are causes of action against may be joined as defendants.

History: En. Sec. 32, Ch. 113, L. 1911; re-en. Sec. 32, Ch. 74, L. 1913; re-en. Sec. 27, Ch. 122, L. 1915; re-en. Sec. 577, R. C. M. 1921.

Collateral References

Elections⇒107.
29 C.J.S. Elections § 46.

23-526. (578) Name of voter must appear in copy of register—identification of voter. No person shall be entitled to vote at any election mentioned in this act unless his name shall, on the day of election, except at school election in school districts of the second and third class, appear in the copy of the official precinct register furnished by the county clerk to the judges of election, and the fact that his name so appears in the copy of the precinct register shall be prima facie evidence of his right to vote; provided, that when the judges shall have good reason to believe, or when they shall be informed by a qualified elector that the person offering to vote is not the person who was so registered in that name, the vote of such person shall not be received until he shall have proved his identity as the person who was registered in that name by the oath of two reputable freeholders within the precinct in which such elector is registered.

History: En. Sec. 35, Ch. 113, L. 1911; amd. Sec. 35, Ch. 74, L. 1913; amd. Sec. 28, Ch. 122, L. 1915; re-en. Sec. 578, R. C. M. 1921.

Collateral References
Elections⇌118.
29 C.J.S. Elections § 38.

23-527. (579) Omission of name from poll-books—remedy. Any elector whose name is erroneously omitted from any precinct poll-book may apply for and secure from the county clerk a certificate of such error, and stating the precinct in which such elector is entitled to vote, and upon the presentation of such certificate to the judges of election in such precinct, the said elector shall be entitled to vote in the same manner as if his name had appeared upon the precinct poll-book. Such certificate shall be marked "voted" by the judges, and shall be returned by them with the poll-book.

History: En. Sec. 29, Ch. 122, L. 1915; re-en. Sec. 579, R. C. M. 1921.

23-528. (580) Authority of deputy county clerk. Wherever in this act the word "county clerk" appears, it shall be construed as extending and giving authority to any regularly appointed deputy county clerk.

History: En. Sec. 36, Ch. 113, L. 1911; re-en. Sec. 36, Ch. 74, L. 1913; re-en. Sec. 30, Ch. 122, L. 1915; re-en. Sec. 580, R. C. M. 1921.

Collateral References
Counties⇌82
20 C.J.S. Counties § 133.

23-529. (581) "Elector" defined. The word "elector" as used in this law, whether used with or without the masculine pronoun, shall apply equally to male and female electors.

History: En. Sec. 31, Ch. 122, L. 1915; re-en. Sec. 581, R. C. M. 1921.

Collateral References
Elections⇌63-65.
29 C.J.S. Elections § 30.

23-530. (582) "Election" defined. The word "election," as used in this law, where not otherwise qualified, shall be taken to apply to general, special, primary nominating, and municipal elections, and to elections in school districts of the first class.

History: En. Sec. 32, Ch. 122, L. 1915; re-en. Sec. 582, R. C. M. 1921.

209 P 1060; Weber v. City of Helena et al., 89 M 109, 117, 297 P 455.

References

Cited or applied in State ex rel. Cryderman v. Wienrich, 54 M 390, 399, 170 P 942; Thompson v. Chapin, 64 M 376, 384,

Collateral References

Elections⇌31, 32.
29 C.J.S. Elections § 66.

23-531. (583) Violation of act, penalty for. Any person or persons, or any officer of any county, city or town, or school district, who, under the provisions of this act, are required to perform any duty, who shall wilfully or knowingly fail, refuse, or neglect to perform such duty, or to comply with the provisions of this act, shall, upon conviction, be fined in the sum of not less than three hundred dollars, nor more than one thousand dollars, or by imprisonment in the county jail for a period of not less than three months and no more than one year. Upon the conviction of any officer of the violation of the provisions of this act, the judge of the district court hearing such proceeding shall, at the time of rendering judgment of conviction, include in such order of conviction an order of the court that such officer be removed from office.

History: En. Sec. 37, Ch. 113, L. 1911;
re-en. Sec. 37, Ch. 74, L. 1913; re-en. Sec.
33, Ch. 122, L. 1915; re-en. Sec. 583, R. C.
M. 1921.

Collateral References

Elections⇒309.
29 C.J.S. Elections §§ 324, 334.

23-532. (584) Challenging of elector and administration of oath. If any person offering to vote at any primary election be challenged by a judge or any qualified elector at said election, as to his right to vote thereat, an oath shall be administered to him by one of the judges that he will truly answer all questions touching his right to vote at such election, and if it appear that he is not a qualified voter under the provisions of this act, his vote shall be rejected; and if any person whose vote shall be so rejected shall offer to vote at the same election, at any other polling place, he shall be deemed guilty of a misdemeanor.

History: En. Sec. 38, Ch. 113, L. 1911;
re-en. Sec. 38, Ch. 74, L. 1913; re-en. Sec.
34, Ch. 122, L. 1915; re-en. Sec. 584, R. C.
M. 1921.

Collateral References

Elections⇒223.
29 C.J.S. Elections § 209.
18 Am. Jur. 327, Elections, § 217.

23-533. (585) Acts constituting violation of law—penalty. Any person who shall make false answers, either for himself or another, or shall violate or attempt to violate any of the provisions of this act, or knowingly encourage another to violate the same, or any public officer or officers, or other persons upon whom any duty is imposed by this act, or any of its provisions, who shall wilfully neglect such duty, or shall wilfully perform it in such way as to hinder the objects and purposes of this act, shall, excepting where some penalty is provided by the terms of this act, be deemed guilty of a felony, and upon conviction thereof shall be punished by imprisonment in the state prison for a period of not less than one year or more than fourteen years, and if such person be a public officer, shall also forfeit his office.

History: En. Sec. 39, Ch. 113, L. 1911;
re-en. Sec. 39, Ch. 74, L. 1913; re-en. Sec.
35, Ch. 122, L. 1915; re-en. Sec. 585, R. C.
M. 1921.

Collateral References

Elections⇒309, 318.
29 C.J.S. Elections §§ 324, 331, 334.

23-534. (586) County commissioners to supply clerk with help. It shall be the duty of the board of county commissioners of each county to provide the county clerk thereof with sufficient help to enable him to properly perform the duties imposed upon him by this act, and the cost of the stationery, printing, publishing, and posting to be furnished or procured by the county clerk by the provisions of this law shall be a proper charge upon the county.

History: En. Sec. 40, Ch. 74, L. 1913;
amd. Sec. 36, Ch. 122, L. 1915; re-en. Sec.
586, R. C. M. 1921.

Collateral References

Counties⇒134.
20 C.J.S. Counties § 209.

CHAPTER 6

JUDGES AND CLERKS OF ELECTIONS

Section 23-601. Judges of election—how appointed.
23-602. Number of judges to be appointed.
23-603. Number appointed in new precincts.

- 23-604. Not more than a majority to be from any one political party.
- 23-605. Compensation of election officers.
- 23-606. Clerk to give notice to judges of appointment—electors to elect judges in case of vacancy.
- 23-607. Judges to choose clerks and to serve until others appointed.
- 23-608. Clerks to mail to judges notices of election—form of notices.
- 23-609. Notices to be posted by the judges.
- 23-610. Oath of judges and clerk.
- 23-611. Judges and clerks may administer oaths.

23-601. (587) Judges of election—how appointed. The board of county commissioners of the several counties at the regular session next preceding a general election, must appoint five judges of election for each precinct in which the voters therein, by the last registration, were two hundred or more and three judges of election for each precinct in which such registration was less than two hundred, provided that in all election precincts in which there were cast three hundred and fifty or more ballots in the last general election or in which the board of county commissioners believe that as many ballots as three hundred and fifty will be cast in the next general election, the board of county commissioners may appoint a second or additional board consisting of five judges for each such precinct, who shall possess the same qualifications as the first board herein mentioned. The judges constituting the second board for each precinct, if such second board shall have been appointed, shall meet at their respective polling places, as designated in the order appointing them, at the time the polls are closed and at said hour or as soon as the first board has completed their duties in regard to the voting, the second board shall take charge of the ballot boxes containing the ballots and shall proceed to count and tabulate the ballots cast as they shall find them deposited in the ballot boxes. In the event that the count is not completed by eight o'clock A. M. of the next following day, the first board shall reconvene and relieve the second board and continue said count until eight o'clock P. M., when if the count is not yet completed, the second board shall reconvene and again relieve the first board, and so, alternately until said board shall have fully completed the count and certified the returns. The judges constituting the several boards shall number the ballots and count the tallies upon the tally sheets and so indicate upon the tally sheets as to distinctly show the work of each board separately. The board completing the count shall make such certification of returns as is required by law.

The board of county commissioners, notwithstanding the foregoing provisions in this section contained, may however, appoint a single board of judges for each precinct in the county, when, in the judgment of said board of county commissioners, a second or additional board is unnecessary.

History: En. Sec. 1260, Pol. C. 1895; re-en. Sec. 500, Rev. C. 1907; re-en. Sec. 587, R. C. M. 1921; amd. Sec. 1, Ch. 43, L. 1923; amd. Sec. 1, Ch. 61, L. 1937; amd. Sec. 1, Ch. 40, L. 1943.

Collateral References

Elections 51, 241 et seq.

29 C.J.S. Elections §§ 57-59, 61, 62, 224 et seq.

Immunity of election officer from criminal arrest. 1 ALR 1160.

Result of election as affected by lack of title or by defective title of election officers. 1 ALR 1535.

23-602. (588) Number of judges to be appointed. The board of county commissioners, notwithstanding the registration, may appoint five judges of

each precinct in which upon information obtained by them they have reason to believe contains two hundred voters or more and three judges of election in precincts which upon information obtained by them, they have reason to believe was less than two hundred.

History: En. Sec. 1261, Pol. C. 1895; re-en. Sec. 501, Rev. C. 1907; re-en. Sec. 588, R. C. M. 1921; amd. Sec. 2, Ch. 43, L. 1923.

23-603. (589) Number appointed in new precincts. In any new precinct established, the board of county commissioners must, in like manner, appoint five or three judges of election, according to the estimated number of voters therein, as required by the two next preceding sections.

History: En. Sec. 1262, Pol. C. 1895; re-en. Sec. 502, Rev. C. 1907; re-en. Sec. 589, R. C. M. 1921.

23-604. (590) Not more than a majority to be from any one political party. In making the appointment of judges of election, such judges must be chosen from a list of qualified electors to be submitted by the county central committee of the two (2) major political parties in the county at least thirty-five (35) days prior to the regular session of the board of county commissioners, next preceding a primary nominating election, a general or special election, such list to contain at least twice the number of judges to be appointed and not more than a majority of such judges must be appointed from any one political party for each precinct and such appointee shall be deemed to belong to the political party upon whose list his name appears, provided that the board of county commissioners may appoint such judges as in case of vacancy or in case any major political party fails to submit a list of judges within the time herein provided.

History: En. Sec. 1263, Pol. C. 1895; re-en. Sec. 503, Rev. C. 1907; re-en. Sec. 590, R. C. M. 1921; amd. Sec. 1, Ch. 85, L. 1941. Cal. Pol. C. Sec. 1143.

Collateral References

Elections⇒52.

29 C.J.S. Elections § 60.

23-605. (591) Compensation of election officers. The compensation of members of boards of election, including judges and clerks, shall be fixed by the board of county commissioners at not to exceed one dollar (\$1.00) per hour for the time actually on duty, and must be audited by the board of county commissioners and paid out of the county treasury.

History: En. Sec. 1173, Pol. C. 1895; re-en. Sec. 459, Rev. C. 1907; amd. Sec. 1, Ch. 101, L. 1917; re-en. Sec. 591, R. C. M. 1921; amd. Sec. 1, Ch. 49, L. 1945; amd. Sec. 1, Ch. 117, L. 1947; amd. Sec. 1, Ch. 12, L. 1951. Cal. Pol. C. Sec. 1072.

Collateral References

Elections⇒53.

29 C.J.S. Elections § 63.

23-606. (592) Clerk to give notice to judges of appointment—electors to elect judges in case of vacancy. The clerk of the board must make out and forward by mail, immediately after the appointment of the judges, a notice thereof in writing, directed to each of them. In case there is no postoffice in any one or more of the precincts in any county, the clerk must forward notices of such appointment by registered mail to the postoffice nearest such precinct, directed to the judges aforesaid. If, in any of the precincts, any of the judges refuse or neglect to serve, the electors

of such precinct may elect a judge or judges to fill vacancies on the morning of the election, to serve at such election.

History: En. Sec. 1264, Pol. C. 1895; re-en. Sec. 504, Rev. C. 1907; re-en. Sec. 592, R. C. M. 1921.

23-607. (593) Judges to choose clerks and to serve until others appointed. The judges may, whenever they deem it necessary for the prompt and efficient conduct of the election within their respective polling places, appoint two persons having the same qualifications as themselves to act as clerks of the election. The judges shall continue to be judges of all elections to be held in their respective precincts until other judges are appointed; and the clerks of election continue to act as such during the pleasure of the judges of election, and the board of county commissioners must from time to time fill vacancies which may occur in the offices of judges of election in any precinct within their respective counties.

History: En. Sec. 6, p. 461, Cod. Stat. 1871; re-en. Sec. 6, p. 71, L. 1876; re-en. Sec. 520, 5th Div. Rev. Stat. 1879; re-en. Sec. 1012, 5th Div. Comp. Stat. 1887; re-en. Sec. 1265, Pol. C. 1895; re-en. Sec. 505, Rev. C. 1907; re-en. Sec. 593, R. C. M. 1921; amd. Sec. 2, Ch. 40, L. 1943.

23-608. (594) Clerks to mail to judges notices of election—form of notices. The clerks of the several boards of county commissioners must, at least twenty (20) days before any general election, make and forward by mail to such judge or judges as are designated by the county commissioners, three written notices for each precinct, said notices to be substantially as follows:

Notice is hereby given that on the first Tuesday after the first Monday of November, 19....., at the house....., in the county of....., an election will be held for..... (naming the offices to be filled, including electors of president and vice-president, a representative in congress, state, county and township officers), and for the determination of the following questions (naming them), the polls of which election will be open at 8 o'clock in the morning and continuing open until 6 o'clock in the afternoon of the same day.

Dated this.....day of....., A. D. 19.....

Signed A. B., clerk of the board of county commissioners.

History: Ap. p. Sec. 7, p. 461, Cod. Stat. 1871; re-en. Sec. 7, p. 71, L. 1876; re-en. Sec. 521, 5th Div. Rev. Stat. 1879; re-en. Sec. 1013, 5th Div. Comp. Stat. 1887; amd. Sec. 1266, Pol. C. 1895; re-en. Sec. 506, Rev. C. 1907; re-en. Sec. 594, R. C. M. 1921; amd. Sec. 2, Ch. 167, L. 1945.

Collateral References

Elections⇒40, 41.
29 C.J.S. Elections §§ 72, 73.

23-609. (595) Notices to be posted by the judges. The judges to whom such notice is directed, as provided in the next preceding section, must cause to be put up in three of the most public places in each precinct the notices of election in such precinct, at least ten days previous to the time of holding any general election, which notices must be posted as follows: One at the house where the election is authorized to be held, and the others at the two most public and suitable places in the precinct.

History: Ap. p. Sec. 8, p. 72, L. 1876;
re-en. Sec. 522, 5th Div. Rev. Stat. 1879;
re-en. Sec. 1014, 5th Div. Comp. Stat. 1887;
amd. Sec. 1267, Pol. C. 1895; re-en. Sec.
507, Rev. C. 1907; re-en. Sec. 595, R. C. M.
1921.

Collateral References
Elections \Rightarrow 42.
29 C.J.S. Elections § 74.

23-610. (596) Oath of judges and clerk. Previous to votes being taken, the judges and clerks of election must take and subscribe the official oath prescribed by the constitution. It is lawful for the judges of election, and they are hereby empowered, to administer the oath to each other, and to the clerks of the election.

History: En. Sec. 1268, Pol. C. 1895;
re-en. Sec. 508, Rev. C. 1907; re-en. Sec.
596, R. C. M. 1921. Cal. Pol. J. Sec. 1148.

23-611. (597) Judges and clerks may administer oaths. Any member of the board, or either clerk thereof, may administer and certify oaths required to be administered during the progress of an election.

History: En. Sec. 1269, Pol. C. 1895;
re-en. Sec. 509, Rev. C. 1907; re-en. Sec.
597, R. C. M. 1921.

Collateral References
Elections \Rightarrow 54.
29 C.J.S. Elections § 57.

CHAPTER 7

ELECTION SUPPLIES

- Section 23-701. County commissioners to furnish poll-books.
23-702. Form of poll-book.
23-703. Want of form not to vitiate.
23-704. County commissioners to have blanks prepared.
23-705. Clerk to deliver ballots and stamps to judges of election—stamp, what to contain.
23-706. Ballot-boxes.
23-707. Size of the opening of the ballot-box.
23-708. Ballot-box to be exhibited.
23-709. County clerk to have printed instructions to the electors.
23-710. Forms for transmission of election returns.
23-711. Copying total vote cast for each candidate.
23-712. Posting and mailing blanks.
23-713. Penalty for failure to comply with law.

23-701. (598) County commissioners to furnish poll-books. The board of county commissioners of each county must furnish for the several election precincts in each county poll-books after the forms hereinafter prescribed.

History: En. Sec. 1300, Pol. C. 1895;
re-en. Sec. 517, Rev. C. 1907; re-en. Sec.
598, R. C. M. 1921

Collateral References
Elections \Rightarrow 212.
29 C.J.S. Elections § 197.

Cross-Reference

County commissioners to furnish poll books, sec. 16-1156.

23-702. (600) Form of poll-book. The following is the form of poll-books to be kept in duplicate by the judges and clerks of election:

 Poll-Book of Precinct No.

 Number and names of electors voting.

No.	Name.	No.	Name.	No.	Name.

Total number of votes cast at precinct No.

We, the undersigned, judges and clerks of an election held at precinct No., in the county of, in the state of Montana, on the day of, 19....., having first been severally sworn according to law, hereby certify that the foregoing is a true statement of the number and names of the persons voting at said precinct at said election, and that the following named persons received the number of votes annexed to their respective names for the following described offices to-wit:

Governor.	Members of Legislative Assembly.		
A. B., Votes	Senate.	House of Representatives	
C. D., Votes	E. F., Votes.	G. H., Votes	

Certified and signed by us.

..... }
 } Clerks.

..... }
 }
 } Judges.
 }

History: En. Sec. 1302, Pol. C. 1895;
 re-en. Sec. 519, Rev. C. 1907; re-en. Sec.
 600, R. C. M. 1921. Cal. Pol. C. Sec. 1174.

References

Cited or applied in *Stephens v. Nacey*,
 47 M 479, 485, 133 P 361.

23-703. (601) Want of form not to vitiate. No poll-book or certificate returned from any election precinct must be set aside or rejected for want of form, nor on account of its not being strictly in accordance with the directions of this chapter, if it can be satisfactorily understood.

History: En. Sec. 1303, Pol. C. 1895;
 re-en. Sec. 520, Rev. C. 1907; re-en. Sec.
 601, R. C. M. 1921. Cal. Pol. C. Sec. 1175.

References

Cited or applied in *Stephens v. Nacey*,
 47 M 479, 485, 133 P 361.

23-704. (602) County commissioners to have blanks prepared. The necessary printed blanks for poll-lists, tally lists, lists of electors, tickets, and returns, together with envelopes in which to inclose the returns, must be furnished by the boards of county commissioners to the officers of each election precinct at the expense of the county.

History: En. Sec. 1174, Pol. C. 1895;
 re-en. Sec. 460, Rev. C. 1907; re-en. Sec.
 602, R. C. M. 1921.

23-705. (603) Clerk to deliver ballots and stamps to judges of election—stamp, what to contain. Before the opening of the polls, the county

clerk, or the city clerk in the case of municipal elections, must deliver to the judges of election of each election precinct which is within the county (or within the municipality in case of municipal election) and in which the election is to be held, at the polling place of the precinct, the proper number of election ballots as provided for in section 23-1117. He must also deliver to said judges a rubber or other stamp, with ink pad, for the purpose of stamping or designating the official ballots as hereinafter provided. Said stamp must contain the words "Official Ballot," the name or number of the election precinct, the name of the county, the date of the election, the name and official designation of the clerk who furnishes the ballots. The judge of election to whom the stamps and ballots are given pursuant to this section must be the same person who may be designated by the commissioners to post the notices required by section 23-608. But in case it be impracticable to deliver such stamps and ballots to such judge then they may be delivered to some other one of the judges of election.

History: Ap. p. Sec. 20, p. 140, L. 1889; amd. Sec. 1356, Pol. C. 1895; re-en. Sec. 547, Rev. C. 1907; re-en. Sec. 603, R. C. M. 1921.

References

Cited in connection with related sections in State ex rel. Brooks v. Farnsham,

19 M 273, 286, 48 P 1; Harrington v. Crichton, 53 M 388, 391, 164 P 537; State ex rel. Riley v. District Court et al., 103 M 576, 588, 64 P 2d 115.

Collateral References

Elections⇐163.
29 C.J.S. Elections § 155.

23-706. (604) Ballot-boxes. There shall be provided at the expense of the county, for each polling precinct, a substantial ballot-box or canvas pouch with a secure lock and key for the ballots and detached stubs as hereinafter provided for. There shall be one opening, and no more in such box or canvas pouch, of sufficient size to admit a single folded ballot. The adoption of the canvas pouch to be used instead of the ballot-box, in any precinct, shall be optional with the commissioners of each county, but in such precincts where pouches are so adopted, the pouches shall be returned to the county clerk together with the other election returns, as by law provided.

History: Ap. p. Sec. 1270, Pol. C. 1895; amd. Sec. 1, Ch. 88, L. 1907; re-en. Sec. 510, Rev. C. 1907; re-en. Sec. 604, R. C. M. 1921.

Collateral References

Elections⇐217.
29 C.J.S. Elections §§ 194, 204.
18 Am. Jur. 321, Elections, § 209.

23-707. (605) Size of the opening of the ballot-box. There must be an opening in the lid of such box of no larger size than shall be sufficient to admit a single folded ballot.

History: En. Sec. 18, p. 463, Cod. Stat. 1871; re-en. Sec. 17, p. 74, L. 1876; re-en. Sec. 531, 5th Div. Rev. Stat. 1879; re-en. Sec. 1023, 5th Div. Comp. Stat. 1887; re-en.

Sec. 1271, Pol. C. 1895; re-en. Sec. 511, Rev. C. 1907; re-en. Sec. 605, R. C. M. 1921.

23-708. (606) Ballot-box to be exhibited. Before receiving any ballots, the judges must, in the presence of any persons assembled at the polling place, open and exhibit the ballot-box and remove any contents therefrom, and then close and lock the same, delivering the key to one of their members, and thereafter the ballot-box must not be removed from the polling place or presence of the bystanders until all the ballots are counted, nor must it be opened until after the polls are finally closed.

History: Ap. p. Sec. 18, p. 463, Cod. amd. Sec. 1272, Pol. C. 1895; re-en. Sec. Stat. 1871; re-en. Sec. 17, p. 74, L. 1876; 512, Rev. C. 1907; re-en. Sec. 606, R. C. M. re-en. Sec. 531, 5th Div. Rev. Stat. 1879; 1921. Cal. Pol. C. Sec. 1162.
re-en. Sec. 1023, 5th Div. Comp. Stat. 1887;

23-709. (607) County clerk to have printed instructions to the electors.

The county clerk of each county must cause to be printed in large type on cards, in the English language, instructions for the guidance of electors in preparing their ballots. He must furnish six cards to the judges of election in each election precinct, and one additional card for each fifty registered electors, or fractional part thereof, in the precinct, at the same time and in the same manner as the printed ballots. The judges of election must post not less than one of such cards in each place or compartment provided for the preparation of ballots, and not less than three of such cards elsewhere in and about polling places upon the day of election. Said cards must be printed in large, clear type, and must contain full instructions to the voters as to what should be done, viz.:

1. To obtain ballots for voting.
2. To prepare the ballots for deposit in the ballot-boxes.
3. To obtain a new ballot in the place of one spoiled by accident or mistake. Said card must also contain a copy of sections 94-1407, 94-1411, 94-1412, 94-1413, 94-1414 and 94-1415. There must also be posted in each of the compartments, or booths, one of the official tickets, as provided in sections 23-1101 to 23-1116, without the official stamp, and not less than three such tickets posted elsewhere in and about the polling places upon the day of election.

History: En. Sec. 1273, Pol. C. 1895; re-en. Sec. 513, Rev. C. 1907; re-en. Sec. 607, R. C. M. 1921. Cal. Pol. C. Sec. 1207.

Collateral References

Elections↪216.
29 C.J.S. Elections § 205.

23-710. (608) Forms for transmission of election returns. In sending out election supplies to each precinct for each general election, it shall be the duty of the county clerk in each county to send with such supplies not less than six printed forms, with a return envelope, for the use of judges of election in transmitting election returns for public information. Said printed forms shall be in ballot form on tinted paper, and the name of each candidate and each proposition voted on shall be printed on said blank. Brief instructions for the use of said blank, as contained in this act, shall also be printed on said blank.

History: En. Sec. 1, Ch. 12, L. 1915; re-en. Sec. 608, R. C. M. 1921.

Operation and Effect

The sole purpose of the tinted sheets provided for by sections 23-710 to 23-713, on which judges of election must summarize the result of the vote and cause a copy thereof to be posted at the polling place and one to be transmitted to the

county clerk, is to facilitate the publication of the results; they are not a part of the election returns and are not required to be transmitted to the clerk in sealed packages. *Dubie v. Batani*, 97 M 468, 478, 37 P 2d 662.

Collateral References

Elections↪247.
29 C.J.S. Elections § 229.

23-711. (609) Copying total vote cast for each candidate. As soon as all of the ballots have been counted in any precinct, it shall be the duty of the election judges to correctly copy the total vote cast for each candidate

and the total vote cast for and against each proposition on the blanks furnished by the county clerk, as provided in the preceding section.

History: En. Sec. 2, Ch. 12, L. 1915;
re-en. Sec. 609, R. C. M. 1921.

References

Dubie v. Batani, 97 M 468, 478, 37 P 2d 662.

23-712. (610) Posting and mailing blanks. One of said blanks, properly filled out, shall be posted forthwith at the polling place; and one copy, correctly filled out, shall be sent by mail or by messenger, when the same can be done without expense, to the county clerk. Said copy may be sent by the same messenger carrying the official election returns, but the same shall not be inclosed or sealed with the other returns.

History: En. Sec. 3, Ch. 12, L. 1915;
re-en. Sec. 610, R. C. M. 1921.

References

Dubie v. Batani, 97 M 468, 478, 37 P 2d 662.

23-713. (611) Penalty for failure to comply with law. Any judge of election, or other officer, who shall fail or refuse to comply with the provisions of this act, shall be deemed guilty of a misdemeanor, and upon conviction thereof shall be fined in any sum not exceeding fifty dollars.

History: En. Sec. 4, Ch. 12, L. 1915;
re-en. Sec. 611, R. C. M. 1921.

Collateral References

Elections 314.

29 C.J.S. Elections § 327.

References

Dubie v. Batani, 97 M 468, 478, 37 P 2d 662.

CHAPTER 8

NOMINATION OF CANDIDATES FOR SPECIAL ELECTIONS BY CONVENTION OR PRIMARY MEETINGS OR BY ELECTORS

- Section 23-801. Convention or primary meeting defined—vacancies.
23-802. Certificates of nomination, what to contain.
23-803. Certificate, where filed.
23-804. Certificates of nomination otherwise made.
23-805. Certificate not to contain certain things—one person not to be nominated for more than one office.
23-806. Certificates to be preserved one year.
23-807. When certificates to be filed.
23-808. Nominees to pay prescribed filing fee.
23-809. Secretary of state to certify to county clerk names of persons nominated.
23-810. Declination of nomination—municipal elections.
23-811. Vacancies may be filled by further certificates.
23-812. Errors, how corrected.
23-813. Qualification of voter at primary election.
23-814. Who entitled to vote.
23-815. Judges.
23-816. Clerk.
23-817. Challenges—oath—penalty.
23-818. Fraudulent voting or counting.
23-819. Unlawful interference.
23-820. Penalties.

23-801. (612) Convention or primary meeting defined—vacancies. Any convention or primary meeting held for the purpose of making nominations to public office, or the number of electors required in this chapter, may nominate candidates for public office to be filled by election in the state. A

convention or primary meeting within the meaning of this chapter is an organized assemblage of electors or delegates representing a political party or principle, and in the event a vacancy shall happen by death or resignation in the representation from any congressional district of the state of Montana in the house of representatives of the Congress of the United States, only the electors residing within such congressional district shall vote at any such convention or primary meeting held for the purpose of making nominations to fill such vacancy.

History: En. Sec. 2, p. 135, L. 1889; amd. Sec. 1310, Pol. C. 1895; re-en. Sec. 521, Rev. C. 1907; re-en. Sec. 612, R. C. M. 1921; amd. Sec. 1, Ch. 26, L. 1945. Cal. Pol. C. Sec. 1186.

Definition

In the following case the supreme court, without directly citing this section, defined a political convention as "an organized assemblage of electors or delegates representing a political party or principle," and convention representation as "a gathering of electors springing from the electors who compose a political party or adhere to a political principle." Where it appeared that a convention was participated in by twenty-one electors of the county who appeared in response to personal invitation, and after acting as a county convention then proceeded to hold a state convention, no call for a state convention having ever been given or delegates elected to either convention, and no notice published throughout the state or county of the gathering of the new party, the nomination of a county ticket and presidential electors by such convention was a nullity. *State ex rel. Metcalf v. Johnson*, 18 M 548, 552, 46 P 533; *State ex rel. Woody v. Rotwitt*, 18 M 502, 46 P 370.

New Political Parties

Since the initiative primary law was not enacted to prevent nominations but to subject them to public regulation and control as far as possible and did not repeal this section so far as it relates to political parties coming into existence after the holding of the primary election, this section was the only law under which the socialist party organized in September, 1922, could proceed to make its nominations. *State ex rel. Mills v. Stewart*, 64 M 453, 464, 210 P 465.

Held, under chapter 7, Laws of 1927 (23-909), providing that a political party which did not cast at least three per cent of the total vote cast for representative in congress at the next preceding general election, or a new party about to be formed, may make nominations for public office by the convention system provided for by this section. *State ex rel. Foster*

et al. v. Mountjoy, 83 M 162, 168 et seq., 271 P 446.

Operation and Effect

This and the two succeeding sections, recognize systems of conventions and primary meetings held to nominate candidates for public office. Such conventions are meant to be organized assemblages of electors or delegates fairly representing the entire body of electors of the political party which may lawfully vote for the candidates of any such convention. Where, therefore, a judicial district comprises two counties, the nomination of a candidate for district judge by a political party at a county convention composed of delegates of that county alone, without the other having been represented or having an opportunity to participate in the proceedings, such action was a mere nullity. *State ex rel. Woody v. Rotwitt*, 18 M 502, 506 et seq., 46 P 370.

Where a political club composed of four hundred members nominated a county ticket at a meeting of some fifty members, and no call for a convention was ever made nor any person ever elected as a delegate to a convention, nor any notice given that a convention was to be held, such proceedings were not those of an organized assemblage of delegates representing a political party within the meaning of this section. *State ex rel. Russell v. Tooker*, 18 M 540, 543 et seq., 46 P 530.

A mass meeting in one of two counties composing a judicial district, called without notice, except to those present at the final adjournment of a regular county convention, for the announced purpose of formulating a protest to the action of the convention, has no authority to name delegates to represent the county in a state and judicial convention in place of those named by the regular county convention; and delegates named by such meeting, though recognized and seated by the state convention, have no authority to represent the county in the judicial convention, and a nomination made by it is invalid, because the electors of both counties are not represented. *State ex rel. Scharnikow v. Hogan*, 24 M 383, 392, 62 P 583. See also *State ex rel. Gilchrist v. Weston*, 27 M 185, 191, 70 P 519.

Where a call for a mass convention of electors stated that the object was to organize central committees opposed to corporate rule, and to give the voters of the state an opportunity to vote for men free from corporate control, but failed to state that the convention was to assemble to nominate candidates for any office whatever, it was not a call of the electors of the state to assemble and select candidates for public office. *State ex rel. Athey v. Hays*, 31 M 233, 236, 78 P 486.

Id. A mass convention of electors can make nominations of candidates for public office only where such convention was called for that purpose. If the convention could not make such nominations because the call of the convention did not set forth such purpose, a committee appointed by the convention was without authority to make the nominations.

Partisan nominations of candidates for judicial offices are recognized by this and the next two succeeding sections. *State ex rel. Holliday v. O'Leary*, 43 M 157, 167, 115 P 204.

Held, that since the primary election law is made applicable only to general elections, fails to provide for the nomination of candidates to be voted for at special elections, and does not repeal prior statutes on the latter subject, this section and section 23-804, are still in force, and therefore nomination of candidates to be voted for at special elections must be made pursuant to the provisions of either this section or section 59-707. *State ex rel. Reibold v. Duncan*, 55 M 380, 177 P 250.

The nomination for presidential electors is a nomination for public office. *State ex rel. Wheeler v. Stewart*, 71 M 358, 363 et seq., 230 P 366.

The primary election law applies to all situations where it can be made reasonably operative. Where a county treasurer, elected in November, 1942 for a four-year term ending March 1, 1947, died after he had qualified and before commencement

of the term for which he was elected, the appointee of the county commissioners under art. XVI, sec. 5, Const., would hold until next general election on November 7, 1944, and procedure under primary law sections 23-901 et seq. and art. XVI, sec. 5, supra, is controlling. A vacancy occurring after the primary and prior to the general election or at any other inapplicable time authorizes nomination under this section or 23-804, section 23-909 then not applying. *LaBorde v. McGrath*, 116 M 283, 286, 149 P 2d 913.

Nominees to be placed on ballot at special election to fill vacancy resulting from death of representative in Congress must be chosen pursuant to this section or section 23-804 and not by special nominating election. *Bottomly v. Ford*, 117 M 160, 167, 157 P 2d 108.

References

Cited or applied in *State ex rel. Mitchell v. District Court*, ___ M ___, 275 P 2d 642, 647.

Collateral References

Elections—125.

29 C.J.S. Elections §§ 91, 104.

18 Am. Jur., Elections, p. 256, §§ 118 et seq.; p. 265, § 134; p. 272, § 142; p. 275, §§ 146 et seq.

Constitutionality of statute relating to power of committee or officials of political party. 62 ALR 924.

Extent of power of political party, committee or officer to exclude persons from participating in its primaries as voter or candidates. 70 ALR 1501.

Political principles or affiliations as ground for refusal of government officials to take steps necessary to representation of party or candidate upon official ticket. 130 ALR 1471.

Personal liability of public officer for breach of duty in respect of election or primary election laws. 153 ALR 109.

23-802. (613) Certificates of nomination, what to contain. All nominations made by such convention or primary meeting must be certified as follows: The certificate of nomination, which must be in writing, must contain the name of each person nominated, his residence, his business, his business address, and the office for which he is named, and must designate, in not more than five words, the party or principle which such convention or primary meeting represents, and it must be signed by the presiding officer and secretary of such convention or primary meeting, who must add to their signatures their respective places of residence, their business, and business addresses. Such certificates must be delivered by the secretary or the president of such convention or primary meeting to the secretary of the state or to the county clerk, as in this chapter required.

History: En. Sec. 3, p. 136, L. 1889; re-en. Sec. 1311, Pol. C. 1895; re-en. Sec. 522, Rev. C. 1907; re-en. Sec. 613, R. C. M. 1921. Cal. Pol. C. Sec. 1187.

Operation and Effect

The requirement of this section is evidently designed to guide the proper officer in printing the ballot, so that he may group the candidates and distinguish them by this designation. State ex rel. Kennedy v. Martin, 24 M 403, 406, 62 P 588.

Under this section all convention nominations of one party must be contained

in a single certificate, and a separate certificate for each nominee cannot be filed. State ex rel. Galen v. Hays, 31 M 227, 230, 78 P 301.

References

Cited or applied in State ex rel. Mitchell v. District Court, ___ M ___, 275 P 2d 642, 647.

Collateral References

Elections ⇨ 138.

29 C.J.S. Elections § 135.

18 Am. Jur. 262, Elections, § 129.

23-803. (614) Certificate, where filed. Certificates of nomination of candidates for offices to be filled by the electors of the entire state, or of any division or district greater than a county, must be filed with the secretary of state. Certificates of nomination for county, township, and precinct officers must be filed with the clerks of the respective counties wherein the officers are to be elected. Certificates of nomination for municipal officers must be filed with the clerks of the respective municipal corporations wherein the officers are to be elected. The certificate of nomination of joint member of the house of representatives must be filed in the offices of the county clerks of the counties to be represented by such joint member.

History: En. Sec. 4, p. 136, L. 1889; re-en. Sec. 1312, Pol. C. 1895; re-en. Sec. 523, Rev. C. 1907; re-en. Sec. 614, R. C. M. 1921. Cal. Pol. C. Sec. 1189.

Operation and Effect

An error in the certificate of nomination filed in accordance with this section, consisting of a misnomer in the name of the party which the convention represented, renders such certificate insufficient and void. State ex rel. Scharnikow v. Hogan, 24 M 397, 401, 62 P 683.

A district judge is a state officer, but there is no provision in this section requiring the certificate of nomination of such an officer from a district containing only a single county to be filed with the secretary of state. In this regard, therefore, there is no specific provision enjoining any duty upon this officer. In view of the policy of the statute and constitution, however, which appears to be that the nomination and election of officers in any county of the state shall be controlled exclusively by the electors therein and

their local officers, the certificate of a candidate for district judge of a district containing only one county is, like that of a county officer, to be filed with the clerk of the county. State ex rel. Doran v. Hays, 27 M 174, 177, 70 P 321.

References

Referred to, in connection with related sections, as section 1312, Political Code, in State ex rel. Woody v. Rotwitt, 18 M 502, 506, 46 P 370; cited or applied as section 1312, Political Code, in State ex rel. Scharnikow v. Hogan, 24 M 379, 380, 62 P 493; as section 523, Revised Codes, in State ex rel. Holliday v. O'Leary, 43 M 157, 167, 115 P 204; State ex rel. Wheeler v. Stewart, 71 M 358, 365, 230 P 366; State ex rel. Mitchell v. District Court, ___ M ___, 275 P 2d 642, 648.

Collateral References

Elections ⇨ 139.

29 C.J.S. Elections § 137.

18 Am. Jur. 262, Elections, § 130.

23-804. (615) Certificates of nomination otherwise made. Candidates for public office may be nominated otherwise than by convention or primary meeting in the manner following:

A certificate of nomination, containing the name of a candidate for the office to be filled, with such information as is required to be given in certificates provided for in section 23-802, must be signed by electors residing within the state and district, or political division in and for which the officer or officers are to be elected, in the following required numbers:

The number of signatures must not be less in number than five per cent of the number of votes cast for the successful candidate for the same office at the next preceding election, whether the said candidate be state, county, township, municipal, or any other political division or subdivision of state or county; but the signatures need not all be appended to one paper. Each elector signing a certificate shall add to his signature his place of residence, his business, and his business address. Any such certificate may be filed as provided for in the next preceding section of this chapter, in the manner and with the same effect as a certificate of nomination made by a party convention or primary meeting.

History: En. Sec. 5, p. 136, L. 1889; re-en. Sec. 1313, Pol. C. 1895; re-en. Sec. 524, Rev. C. 1907; re-en. Sec. 615, R. C. M. 1921. Cal. Pol. C. Sec. 1188.

Operation and Effect

In the case cited below the court refrained from deciding the question whether, under the section of the political code corresponding with the above, a certificate of nomination to be valid must contain the designation of a party or principle, but was disposed to regard it as contemplating simply the candidacy of one not a nominee of a party—an independent or elector's candidate. When all the statutes were read with relation to the different conditions contemplated, it was not prepared to say that the information referred to in said section necessarily extended to more than the name, residence, business address, and the office for which the candidate was nominated. It was decided that a candidate for district judge could not, by petitions, have his name placed on the ticket of a regular party in existence. State ex rel. Woody v. Rotwitt, 18 M 502, 509, 46 P 370.

A candidate for presidential elector, is a candidate for public office within the meaning of this section and may therefore be nominated independently.

Also held that this section providing that candidates for public office may be nominated otherwise than by convention or primary meeting, to-wit, by petition, is applicable to the nomination of independent candidates. State ex rel. Wheeler v. Stewart, 71 M 358, 365, 230 P 366.

The primary election law applies to all

situations where it can be made reasonably operative. Where a county treasurer, elected in November, 1942 for a four-year term ending March 1, 1947, died after he had qualified and before commencement of the term for which he was elected, the appointee of the county commissioners under art. XVI, sec. 5, Const., would hold until next general election on November 7, 1944, and procedure under primary law sections 23-901 et seq. and art. XVI, sec. 5, supra, is controlling. A vacancy occurring after the primary and prior to the general election or at any other inapplicable time authorizes nomination under this section or 23-801, section 23-909 then not applying. LaBorde v. McGrath, 116 M 283, 286, 149 P 2d 913.

Nominees to be placed on ballot at special election to fill vacancy resulting from death of representative in congress must be chosen pursuant to this section or section 23-801 and not by special nominating election. Bottomly v. Ford, 117 M 160, 167, 157 P 2d 108.

References

Cited or applied as section 524, Revised Codes, in State ex rel. Haviland v. Beadle, 42 M 174, 176, 111 P 720; State ex rel. Holliday v. O'Leary, 43 M 157, 165, 115 P 204; State ex rel. Rowe v. Kehoe, 49 M 582, 584, 144 162; State ex rel. Reibold v. Duncan, 55 M 376, 383, 177 P 248; State ex rel. Foster et al. v. Mountjoy, 83 M 162, 168, 271 P 168.

Collateral References

Elections—143, 144.
29 C.J.S. Elections §§ 108, 109, 110, 135.

23-805. (616) Certificate not to contain certain things—one person not to be nominated for more than one office. No certificate of nomination must contain the name of more than one candidate for each office to be filled. No person must join in nominating more than one person for each office to be filled, and no person must accept a nomination to more than one office.

History: En. Sec. 6, p. 136, L. 1889; 525, Rev. C. 1907; re-en. Sec. 616, R. C. M. re-en. Sec. 1314, Pol. C. 1895; re-en. Sec. 1921. Cal. Pol. C. Sec. 1190.

Operation and Effect

Where the same committee appointed by a mass convention nominated two tickets, composed of different persons as candidates for the same offices, such a proceeding was not only wrong, but illegal, and was within the inhibition of this section. This could not have been done by the convention, nor could it be done

by the committee, and the names of such nominees were not entitled to places on the official ballot. State ex rel. Athey v. Hays, 31 M 233, 237, 78 P 486.

Collateral References

Elections ⇨ 144.
29 C.J.S. Elections §§ 108, 135.

23-806. (617) Certificates to be preserved one year. The secretary of state and the clerks of the several counties and of the several municipal corporations must cause to be preserved in their respective offices for one year all certificates of nomination filed under the provisions of this chapter. All such certificates must be open to public inspection under proper regulations to be made by the officers with whom the same are filed.

History: En. Sec. 7, p. 137, L. 1889; re-en. Sec. 1315, Pol. C. 1895; re-en. Sec. 526, Rev. C. 1907; re-en. Sec. 617, R. C. M. 1921. Cal. Pol. C. Sec. 1191.

References

Cited or applied in State ex rel. Mitchell

v. District Court, — M —, 275 P 2d 642, 648.

Collateral References

Elections ⇨ 145.
29 C.J.S. Elections § 137.
18 Am. Jur. 262, Elections, § 130.

23-807. (618) When certificates to be filed. Certificates of nomination to be filed with the secretary of state must be filed with the secretary of state after the primary election and not less than ninety (90) days before the date fixed by law for the election. Certificates of nomination herein directed to be filed with the county clerk must be filed after the primary election and not less than ninety (90) days before the election. Certificates of nomination of candidates for municipal offices must be filed with the clerks of the respective municipal corporations not more than thirty (30) days and not less than fifteen (15) days previous to the day of election; but the provisions of this section shall not be held to apply to nominations for special elections or to fill vacancies.

History: En. Sec. 8, p. 137, L. 1889; amd. Sec. 1316, Pol. C. 1895; re-en. Sec. 527, Rev. C. 1907; re-en. Sec. 618, R. C. M. 1921; amd. Sec. 1, Ch. 64, L. 1925; amd. Sec. 1, Ch. 105, L. 1943; amd. Sec. 1, Ch. 259, L. 1947; amd. Sec. 1, Ch. 160, L. 1949. Cal. Pol. C. Sec. 1192.

Operation and Effect

This section, requiring certificates of nomination to be filed with the secretary of state not more than sixty nor less than thirty days (since amended) before election, is mandatory, and a certificate of

original nominations made at a party convention cannot be filed less than thirty days before election. State ex rel. Galen v. Hays, 31 M 227, 230, 78 P 301.

References

Cited or applied in State ex rel. Mitchell v. District Court, — M —, 275 P 2d 642, 646.

Collateral References

Elections ⇨ 145.
29 C.J.S. Elections § 137.

23-808. (618.1) Nominees to pay prescribed filing fee. All candidates nominated under the provisions of this chapter, shall, upon filing the certificate of nomination as provided by sections 23-803 and 23-807, pay to the officer with whom the certificates of nomination are required to be filed, the fees provided by section 23-910, and such filing fee shall be paid by every person whose name appears upon the ballot at any general election, regardless of the method pursued to secure nomination, provided, however, that only one filing fee shall be required from any candidate, regardless of

the method used in having his name placed upon such general election ballot.

History: En. Sec. 1, Ch. 28, L. 1933.

29 C.J.S. Elections § 137.

18 Am. Jur. 259, Elections, § 125.

Collateral References

Elections 139, 145.

23-809. (619) Secretary of state to certify to county clerk names of persons nominated. Not less than forty-five (45) nor more than ninety (90) days before an election to fill any public office, the secretary of state must certify to the county clerk of each county within which any of the electors may by law vote for candidates for such office, the name and description of each person nominated, as specified in the certificates of nomination filed with the secretary of state.

History: En. Sec. 9, p. 137, L. 1889; re-en. Sec. 1317, Pol. C. 1895; re-en. Sec. 528, Rev. C. 1907; re-en. Sec. 619, R. C. M. 1921; amd. Sec. 1, Ch. 58, L. 1925; amd. Sec. 1, Ch. 104, L. 1943. Cal. Pol. C. Sec. 1193.

Application

The provisions of this section, a general statute, are in conflict with the special provisions of section 72-101, a special statute, which applies specifically and exclusively to the filling of vacancies occurring in the board of railroad commissioners of the state of Montana. State ex rel. Mitchell v. District Court, ___ M ___, 275 P 2d 642, 646.

The time limitations prescribed in this section has no application to an election to fill a vacancy in the board of railroad commissioners created by the resignation of a regularly elected railroad commissioner where, such commissioner defers and withholds the effective date of his resignation until but 32 days remain between such effective date and the day of the general election. State ex rel. Mitchell v. District Court, ___ M ___, 275 P 2d 642, 647.

Operation and Effect

It is by means of the certificate mentioned in this section that the county clerk is informed how to prepare the official ballot for the electors. The secretary of state cannot certify a candidate nominated by electors, as the candidate of a political party, for clearly he is not such a candidate and has no place in a group of candidates certified as nominated by a regular political party convention or organization, under the name of the party making such nomination. State ex rel. Woody v. Rotwitt, 18 M 502, 510, 511, 46 P 370.

References

Cited or applied as section 1317, Political Code, in State ex rel. Scharnikow v. Hogan, 24 M 379, 380, 62 P 493; State ex rel. Wheeler v. Stewart, 71 M 358, 363, 230 P 366; State ex rel. Bevan v. Mountjoy, 82 M 594, 597 et seq., 268 P 558.

Collateral References

Elections 156.

29 C.J.S. Elections § 135.

23-810. (620) Declination of nomination—municipal elections. Whenever any person nominated for public office, as in this chapter provided, shall at least twenty days before election, except in the case of municipal election, in writing, signed by him, notify the office with whom the certificate nominating him is by this chapter to be filed, that he declines such nomination, such nomination shall be void. In municipal elections, such declination shall be made at least five days before the election.

History: En. Sec. 11, p. 138, L. 1889; re-en. Sec. 1319, Pol. C. 1895; re-en. Sec. 529, Rev. C. 1907; re-en. Sec. 620, R. C. M. 1921; amd. Sec. 1, Ch. 15, L. 1925. Cal. Pol. C. Sec. 1192.

Operation and Effect

An election will not be declared void by reason of non-prejudicial defects in the nominating certificate. Stackpole v. Hallahan, 16 M 40, 51 et seq., 40 P 80.

References

Referred to as section 1319, Political Code, in State ex rel. Kennedy v. Martin, 24 M 403, 408, 62 P 588.

Collateral References

Elections 146.

29 C.J.S. Elections § 95.

23-811. (621) Vacancies may be filled by further certificates. If any person so nominated dies before the printing of the tickets, or declines the nomination as in this chapter provided, or if any certificate of nomination is or becomes insufficient or inoperative from any cause, the vacancy or vacancies thus occasioned may be filled in the manner required for original nomination. If the original nomination was made by a party convention which had delegated to a committee the power to fill vacancies, such committee may, upon the occurring of such vacancies, proceed to fill the same. The chairman and secretary of such committee must thereupon make and file with the proper officer a certificate setting forth the cause of the vacancy, the name of the person nominated, the office for which he was nominated, the name of the person for whom the new nominee is to be substituted, the fact that the committee was authorized to fill vacancies, and such further information as is required to be given in an original certificate of nomination. The certificate so made must be executed in the manner prescribed for the original certificate of nomination, and has the same force and effect as an original certificate of nomination. When such certificate is filed with the secretary of state he must, in certifying the nominations to the various county clerks, insert the name of the person who has thus been nominated to fill a vacancy in place of the name of the original nominee. And in the event he has already transmitted his certificate he must forthwith certify to the clerks of the proper counties the name and description of the person so nominated to fill a vacancy, the office he is nominated for, the party or political principle he represents and the name of the person for whom such nominee is substituted.

History: En. Sec. 12, p. 138, L. 1889; re-en. Sec. 1320, Pol. C. 1895; re-en. Sec. 530, Rev. C. 1907; re-en. Sec. 621, R. C. M. 1921. Cal. Pol. C. Sec. 1192.

Operation and Effect

This section does not forbid a political convention from appointing and delegating to a committee power to make nominations for office, and a nomination made by such committee after the adjournment of the convention is in effect the act of the convention, and therefore valid. *State ex rel. Piggott v. Benton*, 13 M 306, 325 et seq., 34 P 301.

Where a convention of a political party has made a nomination, and authorized its committee to fill vacancies, and there is an error in the certificate of nomination filed, consisting of a misnomer of the party which the convention represented, such error renders the certificate void, thereby creating a vacancy to be filled by the committee as provided in this section, construed as section 1320 of the Political Code. *State ex rel. Scharnikow v. Hogan*, 24 M 397, 399 et seq., 62 P 683.

This section is silent touching the time within which must be filed the certificate of nomination made by a committee to

fill a vacancy occasioned by the insufficiency of the certificate of the original nomination. When a convention has made a nomination, and has authorized its committee to fill any vacancy that may occur, the filling of the vacancy by the committee upon the death or resignation of the candidate, or because the original certificate of nomination was or became insufficient or inoperative, may be made at any time before the day of election. *State ex rel. Scharnikow v. Hogan*, 24 M 397, 402, 62 P 683; *State ex rel. Galen v. Hays*, 31 M 227, 231, 78 P 301.

The inadvertent failure to include the name of a convention nominee for a certain office in the certificate of nominations renders the certificate insufficient, within the meaning of this section, and entitles the proper committee to fill the vacancy. *State ex rel. Galen v. Hays*, 31 M 227, 231, 78 P 301.

References

Referred to as section 1320, Political Code, in *State ex rel. Kennedy v. Martin*, 24 M 403, 408, 62 P 588.

Collateral References

Elections—147.

29 C.J.S. Elections §§ 93, 94, 136, 166.

23-812. (622) Errors, how corrected. Whenever it appears by affidavit that an error or omission has occurred in the publication of the name or description of a candidate nominated for office, or in the printing of the ballots, the district court of the county may, upon application of any elector, by order require the county or municipal clerk to correct such error, or to show cause why such error should not be corrected.

History: En. Sec. 19, p. 140, L. 1889; re-en. Sec. 1322, Pol. C. 1895; re-en. Sec. 532, Rev. C. 1907; re-en. Sec. 622, R. C. M. 1921.

Operation and Effect

This section contemplates and authorizes the institution of proceedings to cure, not alone clerical omissions or errors, but likewise extends to instances of defects by way of omissions of names of candidates from the ballot, as well as to erroneous insertions of names of persons as candidates who are not in fact entitled

to be so regarded, and whose names, unless stricken off the official ballot, will be erroneously printed thereon. State ex rel. Brooks v. Fransham, 19 M 273, 288, 48 P 1.

References

Cited or applied as section 1322, Political Code, in State ex rel. Scharnikow v. Hogan, 24 M 383, 392, 62 P 583.

Collateral References

Elections⇨158.
29 C.J.S. Elections §§ 90, 138.

23-813. (623) Qualification of voter at primary election. No person shall be entitled to vote at any caucus, primary meeting, or election, held by any political party, except he be an elector of the state and county within which such caucus, primary meeting, or election is held, and a legal resident of the precinct or district within which such caucus, primary meeting, or election is held, and the limits of which said precinct or district are fixed and prescribed by the regularly chosen and recognized representatives of the party issuing the call for such caucus, primary meeting, or election.

History: En. Sec. 1330, Pol. C. 1895; re-en. Sec. 533, Rev. C. 1907; re-en. Sec. 623, R. C. M. 1921.

Collateral References

Elections⇨125, 126(4).
29 C.J.S. Elections §§ 91, 104, 115.
18 Am. Jur. 281, Elections, §§ 152 et seq.

23-814. (624) Who entitled to vote. No person shall be entitled to vote at any caucus, primary meeting, or election, who is not identified with the political party holding such caucus, primary meeting, or election, or who does not intend to act with such political party at the ensuing election, whose candidates are to be nominated at such caucus or primary meeting. And no person, having voted at any primary meeting or election of any political party whose candidates are to be or have been nominated, shall be permitted to vote at the primary meeting or election of any other political party whose candidates are to be or have been nominated and to be voted for at the same general or special election.

History: Ap. p. Sec. 1331, Pol. C. 1895; amd. Sec. 1, p. 115, L. 1901; re-en. Sec. 534, Rev. C. 1907; re-en. Sec. 624, R. C. M. 1921.

Collateral References

Elections⇨125, 126(4).
29 C.J.S. Elections §§ 91, 104, 115 et seq.
18 Am. Jur., Elections, p. 212, §§ 49 et seq.; p. 281, §§ 152 et seq.

23-815. (625) Judges. Three judges, who shall be legal voters in the precinct where such caucus or primary meeting is held, shall be chosen by the qualified voters of said precinct or district, who are present at the opening of such caucus or primary meeting, and said judges shall be empowered to administer oaths and affirmations, and they shall decide all questions relating to the qualifications of those voting or offering to vote

at such caucus or primary meeting, and they shall correctly count all votes cast and certify the results of the same.

History: En. Sec. 1332, Pol. C. 1895; re-en. Sec. 535, Rev. C. 1907; re-en. Sec. 625, R. C. M. 1921.

23-816. (626) Clerk. The judges shall select one of their number who shall act as clerk, and the clerk must keep a true record of each and every person voting, with their residence, giving the street and number and post-office address.

History: En. Sec. 1333, Pol. C. 1895; re-en. Sec. 536, Rev. C. 1907; re-en. Sec. 626, R. C. M. 1921. Cal. Pol. C. Sec. 1229.

Collateral References

Elections—125.

29 C.J.S. Elections § 91.

18 Am. Jur. 201, Elections, §§ 31 et seq.

23-817. (627) Challenges—oath—penalty. Any qualified voter may challenge the right of any person offering to vote at such caucus or primary meeting, and in the event of such challenge, the person challenged shall swear to and subscribe an oath administered by one of the judges, which oath shall be substantially as follows:

“I do solemnly swear that I am a citizen of the United States, and am an elector of this county and of this precinct where this primary is now being held, that I have been and now am identified with the party or that it is my intention bona fide to act with the party, and identify myself with the same at the ensuing election, and that I have not voted at any primary meeting or election of any other political party whose candidates are to be voted for at the next general or special election.”

If the challenged party takes the oath above prescribed he is entitled to vote; provided, in case a person taking the oath as aforesaid shall intentionally make false answers to any questions put to him by any one of the judges concerning his right to vote at such caucus or primary meeting or election, he shall, upon conviction be deemed guilty of perjury, and shall be punished by imprisonment in the penitentiary for a term of not less than one year nor more than three years.

History: Ap. p. Sec. 1334, Pol. C. 1895; amd. Sec. 2, p. 115, L. 1901; re-en. Sec. 537, Rev. C. 1907; re-en. Sec. 627, R. C. M. 1921. Cal. Pol. C. Sec. 1230.

Collateral References

Elections—125; Perjury—5.

29 C.J.S. Elections § 91; 70 C.J.S. Perjury § 21.

18 Am. Jur. 327, Elections, § 217.

23-818. (628) Fraudulent voting or counting. It shall be unlawful for any judge of any caucus for primary meeting or primary election to knowingly receive the vote of any person whom he knows is not entitled to vote, or to fraudulently or wrongfully deposit any ballot or ballots in the ballot-box, or take any ballot or ballots from the ballot-box of said caucus or primary election, or fraudulently or wrongfully mix any ballots with those cast at such caucus or primary election, or knowingly make any false count, canvass, statement, or return of the ballots cast or vote taken at such caucus or primary election.

History: En. Sec. 1335, Pol. C. 1895; re-en. Sec. 538, Rev. C. 1907; re-en. Sec. 628, R. C. M. 1921.

Collateral References

Elections—125, 126(6).

29 C.J.S. Elections §§ 91, 118.

23-819. (629) Unlawful interference. No person shall, by bribery or other improper means or device, directly or indirectly, attempt to influence any elector in the casting of any ballot at such caucus or primary meeting, or deter him in the deposit of his ballot, or interfere or hinder any voter at such caucus or primary meeting in the full and free exercise of his right of suffrage at such caucus or primary meeting.

History: En. Sec. 1336, Pol. C. 1895;
re-en. Sec. 539, Rev. C. 1907; re-en. Sec.
629, R. C. M. 1921.

Cross-Reference
Bribery of electors at conventions, pen-
alty, sec. 94-1418.

23-820. (630) Penalties. Any person or persons violating any of the provisions of this act, except as provided in section 23-817, shall be guilty of a misdemeanor, and upon conviction thereof shall be punished by a fine of not less than fifty dollars, nor more than two hundred and fifty dollars, or by imprisonment in the county jail not less than three months nor more than twelve months, or by both such fine and imprisonment, in the discretion of the court.

History: En. Sec. 3, p. 116, L. 1901;
re-en. Sec. 540, Rev. C. 1907; re-en. Sec.
630, R. C. M. 1921.

Collateral References
Elections—309 et seq.
29 C.J.S. Elections § 324.

CHAPTER 9

PARTY NOMINATIONS BY DIRECT VOTE—THE DIRECT PRIMARY

- Section 23-901. Construction of law.
23-902. Date of holding primary election—purpose of.
23-903. Primary nominating election notices.
23-904. Application of law to cities and towns.
23-905. Emergency clause.
23-906. Counting of ballots.
23-907. Form of tally sheets—canvass of votes.
23-908. Poll-books and tally sheets to be sealed and returned.
23-909. Political party nominations made exclusively as herein provided.
23-910. Petitions for nomination to be filed.
23-911. Form of petition for nomination.
23-912. Time for filing petitions for nominations.
23-913. Register of candidates.
23-914. Register of candidates is public record—disposition of poll-books, tally sheets, ballots, etc.
23-915. Vacancies in nominations, how filled.
23-916. Arrangement and notice of nominations.
23-917. Arrangement of ballots and notice.
23-918. Supplies printed and furnished by county.
23-919. Ballots, how arranged, printed and voted.
23-920. Official and sample ballots—preparation and number.
23-921. Canvass of returns.
23-922. Duties of county clerk after canvass of vote—state canvass.
23-923. Error in ballot or count.
23-924. Secretary of state may send for returns.
23-925. Penalty for official misconduct.
23-926. Notice of contest.
23-927. Service of notice—contest—how heard.
23-928. Contest—how tried and decided.
23-929. County and city central committeemen, how elected.
23-930. National committeemen—selection and term.
23-931. Penalty for violation of law.
23-932. Candidates to formulate state platform.
23-933. Penalty for bribery, etc.

- 23-934. General penal laws applicable.
 23-935. Forgery and suppression of nomination papers.
 23-936. General laws applicable to this enactment.

23-901. (631) Construction of law. Whenever the provisions of this law in operation prove to be of doubtful or uncertain meaning, or not sufficiently explicit in directions and details, the general laws of Montana, and especially the election and registration laws, and the customs, practice, usage, and forms thereunder, in the same circumstances or under like conditions, shall be followed in the construction and operation of this law, to the end that the protection of the spirit and intention of said laws shall be extended so far as possible to all primary elections, and especially to all primary nominating elections provided for by this law. If this proposed law shall be approved and enacted by the people of Montana, the title of this bill shall stand as the title of the law.

History: En. Sec. 1, Initiative Measure Nov. 1912; re-en. Sec. 631, R. C. M. 1921. Cal. Pol. C. Secs. 1357-1380.

Operation and Effect

The so-called anti-fusion statute was not impliedly repealed by the primary election law. *State ex rel. Metcalf v. Wileman*, 49 M 436, 437, 143 P 565.

Under the rule that where two statutes are enacted at the same time on the same subject, they must be construed together and effect given to both if possible, held that the provisions of the primary law (Laws 1913, p. 570), and the corrupt practices act (*Id.* p. 593), insofar as they refer to election contests, provide a complete and workable system, omitting section 30 of the primary laws. *Wilkinson v. La Combe*, 59 M 518, 520, 197 P 836.

Nominees to be placed on ballot at special election to fill vacancy resulting from death of representative in congress must be chosen pursuant to section 23-801 or section 23-804 and not by special primary nominating election. *Bottomly v. Ford*, 117 M 160, 162, 157 P 2d 108.

References

Cited or applied as Laws of 1913, p. 570, in *Cadle v. Town of Baker*, 51 M 176, 181, 149 P 960; *Thompson v. Chapin*, 64 M 376, 383, 209 P 1060; *State ex rel. Mills v. Stewart*, 64 M 453, 464, 210 P 465; *LaBorde v. McGrath*, 116 M 283, 288, 149 P 2d 913 (referring to secs. 23-901 through 23-936, the Primary Election Law).

Collateral References

Elections \Leftrightarrow 126(1).
 29 C.J.S. Elections §§ 91, 111.

23-902. (632) Date of holding primary election—purpose of. On the first Tuesday of June, preceding any general election not including special elections to fill vacancies, municipal elections in towns and cities, irrigation district and school elections, at which public officers in this state and in any district or county are to be elected, a primary nominating election shall be held in accordance with this act in the several election precincts comprised within the territory for which such officers are to be elected at the ensuing election, which shall be known as the primary nominating election, for the purpose of choosing candidates by the political parties, subject to the provisions of this act, for United States senators and representatives, in Congress and all other elective state, district and county officers, and delegates to any constitutional convention or conventions that may hereafter be called, who are to be chosen, at the ensuing election wholly by electors within the state, or any subdivision of this state, for the purpose of expressing preferences for candidates for president of the United States, and also for choosing and electing county central committeemen and committeewomen by the several parties subject to the provisions of this act.

History: En. Sec. 2, Initiative Measure Nov. 1912; re-en. Sec. 632, R. C. M. 1921; amd. Sec. 1, Ch. 118, L. 1925; amd. Sec. 1, Ch. 3, L. 1927; amd. Sec. 12, Ch. 214, L.

1953 (Referendum Measure adopted November 2, 1954 effective December 7, 1954); amd. Sec. 1, Ch. 266, L. 1955.

29 C.J.S. Elections §§ 91, 111.

18 Am. Jur. 275, Elections, §§ 146 et seq.

References

Wilkinson v. La Combe, 59 M 518, 520, 197 P 836; State ex rel. Mills v. Stewart, 64 M 453, 463, 210 P 465; State ex rel. Foster et al. v. Mountjoy, 83 M 162, 166, 271 P 446; State ex rel. Wulf v. McGrath, 111 M 96, 99, 106 P 2d 183; LaBorde v. McGrath, 116 M 283, 288, 149 P 2d 913; Bottomly v. Ford, 117 M 160, 164, 157 P 2d 108.

Collateral References

Elections⇒126(1).

Determination of controversies within political party. 20 ALR 1035.

Validity of public election as affected by fact that it was held at time other than that fixed by law. 121 ALR 987.

Constitutionality, construction, and application of statutes regarding party affiliations or change thereof as affecting eligibility to nomination for public office. 153 ALR 641.

Power of political party or its officials to withdraw nominations. 155 ALR 186.

23-903. (633) Primary nominating election notices. It shall be the duty of the county clerk, twenty (20) days before any primary nominating election, to prepare printed notices of such election, and mail two of said notices to each judge and clerk of election in each precinct; and it shall be the duty of the several judges and clerks immediately to post said notices in public places in their respective precincts. Said notices shall be substantially in the following form:

PRIMARY NOMINATING ELECTION NOTICE

Notice is hereby given that on _____, the _____ day of _____, 19____, at the _____, in the precinct of _____, Montana, a primary nominating election will be held at which the (insert the names of political parties subject to this law) will choose their candidates for state, district, county, precinct and other offices, namely (here name the offices to be filled, including a senator in congress, delegates to any constitutional convention then called, and candidates for county central committeemen to be elected); which election will be held at ten o'clock A.M., and will continue until eight o'clock P.M. of said day; provided that in precincts having less than one hundred (100) registered electors the polls must be opened at one o'clock in the afternoon of election day and must be kept open continuously until eight o'clock P.M. of said day, when they must be closed; provided further, that whenever all registered electors in any precinct have voted the polls shall be immediately closed.

Dated this _____ day of _____, 19____.

_____, county clerk.

History: En. Sec. 3, Initiative Measure Nov. 1912; re-en. Sec. 633, R. C. M. 1921; amd. Sec. 3, Ch. 167, L. 1945; amd. Sec. 2, Ch. 207, L. 1955.

64 M 453, 463, 210 P 465; State ex rel. Wulf v. McGrath, 111 M 96, 100, 106 P 2d 183.

Collateral References

Elections⇒126(2).

29 C.J.S. Elections § 117.

References

Wilkinson v. La Combe, 59 M 518, 520, 197 P 836; State ex rel. Mills v. Stewart,

23-904. (634) Application of law to cities and towns. The nomination of candidates for municipal offices by the political parties, subject to the provisions of this law, shall be governed by this law in all incorporated towns and cities of this state having a population of thirty-five hundred and

upward as shown by the last preceding national or state census. All petitions by the members of such political parties for placing the names of candidates for nomination for such municipal offices on the primary nominating ballots of the several political parties shall be filed with the city clerk of said several towns and cities, and it shall be the duty of such officers to prepare and issue notices of election for such primary nominating elections in like manner as the several county clerks perform similar duties for nomination by such political parties for county offices at primary nominating elections. The duties imposed by this law on the county clerks at primary nominating elections are hereby, as to said towns and cities, designated to be the duties of the city clerk of said towns and cities as to primary nominating elections of the political parties, subject to the provisions of this law, provided, that in cities and towns the primary nominating election shall be held on the fourteenth day preceding their municipal elections. If no petitions for nomination under this law for any office to be filled at the next ensuing annual city election is filed with the city clerk of any city, not less than 30 days before the date fixed by law for the holding of a primary nominating election, then there shall be no primary election held within such city, and the city clerk shall, not less than twenty-five days before the date fixed for the holding of the primary nominating election, certify to the county clerk of the county in which such city or town is situated that no petition for nomination under the direct primary election law for any office to be filled at the next ensuing annual election has been filed with such city clerk within the time provided by law. Under the provisions of this law the lawfully constituted legislative and executive authorities of cities and town, within the provisions of this section, shall have such power and authority over the establishing of municipal voting precincts and wards, municipal boards of judges and clerks of election and other officers of their said municipal election, and other matters pertaining to municipal primary nominating elections required for such cities and towns by this law, such legislative and executive authorities have over the same matter at their municipal elections for choosing the public officers of said cities and towns.

History: En. Sec. 4, Initiative Measure Nov. 1912; amd. Sec. 1, Ch. 88, L. 1921; re-en. Sec. 634, R. C. M. 1921; amd. Sec. 1, Ch. 62, L. 1933.

References

Wilkinson v. La Combe, 59 M 518, 520, 197 P 836; State ex rel. Mills v. Stewart, 64 M 453, 464, 210 P 465.

23-905. (635) Emergency clause. This act is declared to be an emergency law, and a law necessary for the immediate preservation of the public peace and safety.

History: En. Sec. 3, Ch. 88, L. 1921; re-en. Sec. 635, R. C. M. 1921.

Collateral References

Elections 126(1).
29 C.J.S. Elections § 91.

23-906. (636) Counting of ballots. Immediately after the closing of the polls at a primary nominating election, the clerks and judges of election shall open the ballot-boxes at each polling place and proceed to take therefrom the ballots. Said officers shall count the number of ballots cast by each political party, at the same time bunching the tickets cast for each political party together in separate piles, and shall then fasten each pile separately by means of a brass clip, or may use any means which shall effectually

ally fasten each pile together at the top of each ticket. As soon as the clerks and judges have sorted and fastened together the ballots separately for each political party, then they shall take the tally sheets provided by the county clerk and shall count all the ballots for each political party separately until the count is completed, and shall certify to the number of votes for each candidate for nomination for each office upon the ticket of each party. They shall then place the counted ballots in the box. After all have been counted and certified to by the clerks and judges they shall seal the returns for each of said political parties in separate envelopes, to be returned to the county clerk.

History: En. Sec. 5, Initiative Measure Nov. 1912; re-en. Sec. 636, R. C. M. 1921. Wulf v. McGrath, 111 M 96, 100, 106 P 2d 183.

References	Collateral References
Wilkinson v. La Combe, 59 M 518, 520, 197 P 836; State ex rel. Mills v. Stewart, 64 M 453, 464, 210 P 465; State ex rel.	Elections⇒126(7). 29 C.J.S. Elections § 119. 18 Am. Jur. 346, Elections, §§ 252 et seq.

23-907. (637) Form of tally sheets—canvass of votes. Tally sheets for each political party having candidates to be voted for at said primary nominating election shall be furnished for each voting precinct by the county clerk, at the same time and in the same manner that the ballots are furnished and shall be substantially as follows:

(1) Tally sheet of the primary nominating election for.....
(name of political party) held at precinct, in the county
of on the day of
19.....

The names of the candidates shall be placed on the tally sheets and numbered in the order in which they appear on the official and sample ballots, and in each case shall have the proper political party designated at the head thereof.

(2) The following shall be the form of the tally sheets kept by the judges, and clerks of the primary nominating election under this law, containing the number and name of each person voted for, the particular office for nomination to which each person was voted for, the total number of votes cast for each candidate for nomination. The tally or count as it is kept by each of the clerks shall be audibly announced as it proceeds, and shall be kept in the manner and form as follows:

No.	Name of Candidate	Office	Total Vote Received	No.	Tally 5	No.	Tally 10	No.	Tally 15
12	12	.....	12	.....	12	.....
13	13	.....	13	.....	13	.....
14	14	.....	14	.....	14	.....

The columns for the numbers 12, 13, 14, etc., shall not be over three-eighths of an inch wide. The columns for the tallies shall be three-eighths of an inch wide, the lines shall be three-eighths of an inch apart; every ten lines the captions of the columns shall be reprinted between double-

ruled lines in bold-faced small pica, and all figures shall be printed in bold-faced small pica. The tally sheets shall conclude with the following form of certificate:

We hereby certify that at the above primary nominating election and polling place each of the foregoing named persons received the number of votes set opposite his name, as above set forth, for the nomination for the office specified.

....., Chairman.	....., Clerk.
	(Who kept this sheet.)
....., Judge.	....., Clerk.
....., Judge.	....., Clerk.
	(Who kept the other sheet.)

(3) During the counting of the ballots each clerk shall, with pen and ink, keep tally upon one of the above tally sheets, of each political party, and shall total the number of tallies and write the total in ink immediately to the right of the last tallies for each candidate and also in the columns headed "total vote" and shall prepare the certificate thereto above indicated; and immediately upon the completion of the count, all the clerks shall sign the tally sheets, and each of them shall certify which sheets were kept by him; and the chairman and the judges, being satisfied of the correctness of the same, shall then sign all of said tally sheets. The clerks shall then prepare a statement of that portion of the tally sheets showing the number and name and political party of each candidate for nomination and the office and total votes received by each in the precinct, and shall prepare the certificate thereto, which statement shall be signed by the judges and clerks who complete the count, and shall be immediately posted in a conspicuous place on the outside of said polls, there to remain for ten days.

History: En. Sec. 6, Initiative Measure
Nov. 1912; re-en. Sec. 637, R. C. M. 1921.

References

Wilkinson v. La Combe, 59 M 518, 520,
197 P 836; State ex rel. Mills v. Stewart,
64 M 453, 464, 210 P 465.

23-908. (638) Poll-books and tally sheets to be sealed and returned.

(1) Immediately after canvassing the votes in the manner aforesaid, the judges and clerks who complete the count, before they separate or adjourn shall inclose the poll-books in separate covers and securely seal the same. They shall also inclose the tally sheets in separate envelopes and seal the same securely. They shall also envelope all the ballots fastened together, as aforesaid, and seal the same securely; and they shall in writing, with pen and ink, specify the contents, and address each of said packages upon the outside thereof to the county clerk of the county in which the election precinct is situated. These sealed packages of counted ballots shall be marked on the outside, showing what numbers are contained therein, but once sealed they are not to be opened by any one until so ordered by the proper court.

(2) When the count is completed, the ballots counted and sealed, and enveloped and marked for identification as aforesaid, shall be packed in the two ballot-boxes, and nothing else shall be put into the boxes. The boxes shall then be locked, and the official seal of the board shall be pasted

over the keyhole and over the rim of the lid of the box, so that the box cannot be opened without breaking the seal. Thereafter neither the county clerk nor the canvassers making the abstracts of the votes shall break the said seals upon the ballot-boxes, nor shall anyone break the seals on the boxes or the ballots, except upon the order of the proper court in case of contest, or upon the order of the county board when the boxes are needed for the ensuing election.

History: En. Sec. 7, Initiative Measure
Nov. 1912; re-en. Sec. 638, R. C. M. 1921.

References

Wilkinson v. La Combe, 59 M 518, 520,
197 P 836; State ex rel. Mills v. Stewart,
64 M 453, 464, 210 P 465.

23-909. (639) Political party nominations made exclusively as herein provided. Every political party which has cast three per centum (3%) or more of the total vote cast for representative in Congress at the next preceding general election in the county, district or state for which nominations are proposed to be made, shall nominate its candidates for public office in such county, district or state, under the provisions of this law, and not in any other manner; and it shall not be allowed to nominate any candidate in the manner provided by section 23-801. Every political party and its regularly nominated candidates, members, and officers, shall have the sole and exclusive right to the use of the party name and the whole thereof, and no candidate for office shall be permitted to use any word of the name of any other political party or organization than that of and by which he is nominated. No independent or non-partisan candidate shall be permitted to use any word of the name of any existing political party or organization in his candidacy. The names of candidates for public office nominated under the provisions of this law shall be printed on the official ballots for the ensuing election as the only candidates of the respective parties for such public office in like manner as the names of the candidates nominated by other methods are required to be printed on such official ballots.

Any political party that did not cast three per centum (3%) or more of the total vote cast for representative in Congress, as above, and any new political party about to be formed or organized, [may] make nominations for public office as provided in section 23-801. At the primary election herein provided, of each year in which a president and vice-president of the United States are to be nominated and elected, the several political parties recognized by the laws of this state shall express their popular choice for the party nomination for the president of the United States. That the names of persons desirous of becoming candidates for president shall have their names placed on the primary ballot, provided for herein, in the following manner:

1. Any person who is a candidate for the nomination of his party for president of the United States, may, beginning sixty (60) days prior to the said June primary, and not later than forty (40) days prior to said election, file with the secretary of state, an affidavit of candidacy, requesting that his name be entered on the presidential primary ballot of his party, stating in said affidavit the name of his party.

2. Beginning sixty (60) days prior to said primary election and not later than forty (40) days prior to said election, there may be placed

on the ballot, by petition, filed with the secretary of state, the name of any person as a candidate for the nomination for the presidency of the United States; provided, however, the candidate whose endorsement is desired, shall be a member of a party that received not less than five per cent (5%) of the total number of votes cast at the next preceding presidential election.

The said petition may consist of one (1) or more writings or pages of signatures bound together, and shall include the following information:

(a) The name of the candidate whose endorsement is desired, and the name of the political party on whose ballot the name is to be entered.

(b) A statement that the filing is made in good faith and for the purpose of advancing the candidacy of the person whose name is filed.

The said petition shall contain signatures of electors of not less in number than one per cent (1%) of the number of votes cast at the next preceding presidential election. After the signature of each elector, there shall be written his postoffice address and the congressional district in which he resides. Provided, however, that not more than twenty per cent (20%) of the number of required signatures shall be electors of any one county.

The names of the persons filed for candidates for president in this act, shall be printed on the primary ballots provided for by section 23-919, in the following form:

Candidates for President

- ☐ John Doe
- ☐ Richard Doe
- ☐ _____

and that the said ballot shall be canvassed and counted in the manner as provided by section 23-921.

History: En. Sec. 8, Initiative Measure Nov. 1912; re-en. Sec. 639, R. C. M. 1921; amd. Sec. 1, Ch. 7, L. 1927; amd. Sec. 2, Ch. 266, L. 1955.

Compiler's Note

The bracketed word "may" was inserted by the compiler.

Construction

Where the legislature at the same session passes two statutes relating to the same subject matter, it may not be presumed that by enacting the second, without making reference to the first, it intended to limit the scope of the first, but the two must be read together and harmonized, and under that rule, held that chapter 7, Laws of 1927 (this section), and chapter 126 (23-1001 et seq.), providing for a method of electing presidential electors, etc., are not in irreconcilable conflict. State ex rel. Foster et al. v. Mountjoy, 83 M 162, 168, 271 P 446.

Operation and Effect

Held, that assuming (but not deciding) that an existing political party may use the term "Independent" in its party name, such use cannot deprive another

candidate from employing that term in designating the character of his candidacy for the same office, and that provision of this section, prohibiting an independent candidate from using any word of the name of an existing political party has no application in such circumstances. State ex rel. Wheeler v. Stewart, 71 M 358, 361 et seq., 230 P 366.

Held, under chapter 7, Laws of 1927 (this section), providing that a political party which did not cast at least three per cent of the total vote cast for representative in congress at the next preceding general election, or a new party about to be formed, may make nominations for public office by the convention system provided for by section 23-801 et seq. State ex rel. Foster et al. v. Mountjoy, 83 M 162, 168, 271 P 446.

Id. Under the above, held, on application for writ of mandate to compel the secretary of state to place the names of the candidates of the Workers (Communist) party for presidential electors, nominated by it at a mass convention, upon the official ballot for the general election to be held on November 6, 1928, refusal so to do being based on the ground that such party was in existence in 1924, and

therefore could not make nominations by convention, that even if it was in existence prior to the spring primary of 1928, it was nevertheless entitled to a place on the ballot because it failed to cast three per cent of the vote for representative in Congress on the last general election, whether that election be held to be the one of 1924 or of 1926, and therefore could select its candidates by convention.

Whenever the provisions of the primary nominating election law (secs. 23-901 through 23-936) apply, the convention or primary meeting methods of making nominations provided for in section 23-801, are expressly ruled out and prohibited by section 23-909. *LaBorde v. McGrath*, 116 M 283, 288, 149 P 2d 913.

Id. Whenever it would be impossible or unreasonable for candidates to file and otherwise comply with the primary nominating election law (secs. 23-901 through 23-936) the prohibition of section 23-909 would not apply and candidates could be nominated pursuant to sections 23-801 and 23-804.

Presidential Electors are Candidates for Public Office

Held, that candidates for presidential electors are candidates for public office, within the meaning of this section, pro-

viding for primary elections of candidates for public office. *State ex rel. Foster et al. v. Mountjoy*, 83 M 162, 168, 271 P 446.

References

Wilkinson v. La Combe, 59 M 518, 520, 197 P 836; *State ex rel. Mills v. Stewart* 64 M 453, 464, 210 P 465; *Bottomly v. Ford*, 117 M 160, 165, 157 P 2d 108.

Collateral References

Elections—126(1).
29 C.J.S. *Elections* §§ 91, 111.
18 Am. Jur., *Elections*, p. 256, §§ 118 et seq.; p. 265, § 134; p. 272, § 142.

Constitutionality of statute relating to power of committee or officials of political party. 62 ALR 924.

Extent of power of political party, committee or officer to exclude persons from participating in its primaries as voter or candidates. 70 ALR 1501.

Political principles or affiliations as ground for refusal of government officials to take steps necessary to representation of party or candidate upon official ticket. 130 ALR 1471.

Personal liability of public officer for breach of duty in respect of election or primary election laws. 153 ALR 109.

23-910. (640) Petitions for nomination to be filed. (1) Any person who shall desire to become a candidate for nomination to any office under this law shall send by registered mail, or otherwise, to the secretary of state, county clerk, or city clerk, a petition for nomination, signed by himself, accompanied by the filing fee hereinafter provided for, and such petition shall be filed and shall be conclusive evidence for the purpose of this law that such elector is a candidate for nomination by his party. All nominating petitions pertaining to congressional, state or district offices to be voted for in more than one county, and for judges of the district court shall be filed in the offices of the secretary of state; for county and district offices, to be voted for in one county only, and for township and precinct offices, shall be filed in the office of the county clerk; and for all city offices in the office of the city clerk.

The fees required to be paid for filing such petitions shall be as follows:

For any office with a salary attached of one thousand dollars (\$1,000.00) or less per annum, ten dollars (\$10.00); except candidates for the state senate and house of representatives shall be fifteen dollars (\$15.00).

For any office with a salary attached of more than one thousand dollars (\$1,000.00) per annum, one per cent (1%) of total amount of annual salary.

For the office of county commissioner in counties of the first class, forty dollars (\$40.00); in counties of the second class, thirty-five dollars (\$35.00); in counties of the third class, thirty dollars (\$30.00); in counties of the fourth class, twenty-five dollars (\$25.00); in all other classes of counties, ten dollars (\$10.00).

For the office the compensation of which consists of fees instead of a salary, five dollars (\$5.00).

For state, county and precinct committeeman, delegates to national conventions and presidential electors no fees shall be required to be paid.

(2) Any person receiving the nomination by having his name written in on the primary ballot, and desiring to accept such nomination, shall file with the secretary of state, county clerk, or city clerk, a written declaration indicating his acceptance of said nomination within ten (10) days after the election at which he receives such nomination, and at the same time he shall pay to the officer with whom such declaration of acceptance is filed the fee above provided for filing a primary nominating petition for such office, provided that such person must receive at least five per cent (5%) of the votes cast for such office at the last preceding general election. No candidate receiving a nomination at a primary election as above provided shall have his name printed on the official ballot for the general election without complying with the provisions of this section.

History: En. Sec. 9, Initiative Measure Nov. 1912; re-en. Sec. 640, R. C. M. 1921; amd. Sec. 1, Ch. 133, L. 1923; amd. Sec. 1, Ch. 125, L. 1927; amd. Sec. 1, Ch. 27, L. 1945.

Resignation of Successful Write-in Candidate Who Filed Too Late Does Not Create Vacancy

Where a successful write-in candidate at a nominating election failed to file his acceptance within ten days after election day, his subsequent resignation did not result in a vacancy which the county central committee of his party could fill under section 23-929. State ex rel. Wilkin-son v. McGrath, 111 M 102, 106 P 2d 186.

Where Deceased Candidate Received Majority of Votes, Highest Write-in Candidate Held Elected

Where a candidate for re-election to a county office died 24 days before election, his death known generally to electors, but his name placed on ballot and majority voted for him supposing to retain his widow, appointed to fill the vacancy, until the next general election, a write-in candidate whom they intended to defeat, receiving the highest vote cast for any living person, held, on his application for writ of mandate to compel the county canvassing board to reconvene and cause certi-

ficate of election issued to him, that write-in candidate elected and entitled to the office. State ex rel. Wolff v. Guerink, 111 M 417, 426, 109 P 2d 1094.

Write-in Candidates Must File Within Ten Days After "Election" Day

Construing this section as to when a write-in candidate must file written acceptance, held, that the term "election" means the day of election and not the day on which the canvass of the ballots was completed, hence a candidate for house of representatives who filed acceptance 18 days after election was not entitled to a writ of mandate to compel the county clerk to include his name on the general election official ballot. State ex rel. Wulf v. McGrath, 111 M 96, 97, 106 P 2d 183.

References

Wilkinson v. La Combe, 59 M 518, 520, 197 P 836; State ex rel. Mills v. Stewart, 64 M 453, 464, 210 P 465; State ex rel. McHale v. Ayers, 111 M 1, 4, 105 P 2d 686.

Collateral References

Elections 126(4).
29 C.J.S. Elections §§ 114, 115.
18 Am. Jur. 256, Elections, §§ 119 et seq.

23-911. (641) Form of petition for nomination. The petition for nomination required by the preceding section shall be substantially in the following form:

To (name and title of officer with whom petition is to be filed) and to the members of the party and the electors of the (state or counties of comprising the district or county or city, as the case may be) in the State of Montana;

I reside at and my post office address is I am a candidate of the party

for the nomination for the office of at the primary nominating election to be held in the (State of Montana or district, or county or city) on the day of, 19....., and if I am nominated as the candidate of the party for such office I will accept the nomination and will not withdraw, and if I am elected I will qualify as such officer.

If I am nominated and elected I will, during my term of office (here the candidate, in not exceeding one hundred words, may state any measure or principles he especially advocates).

.....
Signature of Candidate for Nomination.

Every such petition shall be signed as above by the elector seeking such nomination.

History: En. Sec. 10, Initiative Measure Nov. 1912; re-en. Sec. 641, R. C. M. 1921; amd. Sec. 1, Ch. 133, L. 1923; amd. Sec. 1, Ch. 6, L. 1953.

References

Wilkinson v. La Combe, 59 M 518, 520, 197 P 836; State ex rel. Mills v. Stewart,

64 M 453, 464, 210 P 465; Mulholland v. Ayers et al., 109 M 558, 565, 99 P 2d 234.

Collateral References

Elections 126(4).

29 C.J.S. Elections §§ 114, 115.

23-912. (644) Time for filing petitions for nominations. All petitions for nomination under this act for offices to be filled by the state at large or by any district consisting of more than one (1) county, and nominating petitions for judges of district courts in districts consisting of a single county, shall be filed in the office of the secretary of state not less than forty (40) days before the date of the primary nominating election; and for other offices to be voted for in only one (1) county, or district or city, every such petition shall be filed with county clerk or city clerk as the case may be, not less than forty (40) days before the date of the primary nominating election.

History: En. Sec. 13, Initiative Measure Nov. 1912; re-en. Sec. 644, R. C. M. 1921; amd. Sec. 2, Ch. 133, L. 1923; amd. Sec. 1, Ch. 19, L. 1955.

Operation and Effect

Held, on application for writ of injunction to prevent certification of names of certain aspirants for state office as candidates to be voted on at the primary election to be held on July 17, the date fixed by law for such election, that the provision of this section, requiring the filing of petitions for nomination for state offices with the secretary of state "not less than forty days before the date" of the election, construed in the light of other sections of the code fixing the time within which the secretary of state shall certify the names of such candidates as in pari materia, is exclusive, making inapplicable the provision of section 90-407, that the time in which any act provided by law

is to be done must be computed by excluding the first day and including the last; that, forty full days being required, the date of filing must be excluded from computation and, the section providing that the filing must be done forty days before the date of the election, July 17 may not be counted; that therefore nominating petitions were required to be filed before midnight of June 6 and petitions filed on June 7 were too late and the names of the candidates therein mentioned not entitled to certification. State ex rel. Bevan v. Mountjoy, 82 M 594, 597, 268 P 558.

References

Wilkinson v. La Combe, 59 M 518, 520, 197 P 836; State ex rel. Mills v. Stewart, 64 M 453, 464, 210 P 465.

Collateral References

18 Am. Jur. 262, Elections, § 130.

23-913. (645) Register of candidates. The secretary of state, county clerk and city clerk shall keep a book entitled "Register of Candidates for

Nomination at the Primary Nominating Election," and shall enter thereon on different pages of the book for different political parties subject to the provisions of this law, the title of the office sought and the name and residence of each candidate for nomination at the primary election; the name of his political party; the date of receiving the petition for nomination signed by the candidate; and such other information as may aid him in arranging his official ballot for said primary nominating election. Immediately after the canvass of votes cast at a primary nominating election is completed, the county clerk, secretary of state or city clerk, as the case may be, shall enter in his book marked "Register of Nominations," the date of such entry, the name of each candidate nominated, the office for which he is nominated, and the name of the party making the nomination.

History: En. Sec. 14, Initiative Measure Nov. 1912; re-en. Sec. 645, R. C. M. 1921; amd. Sec. 1, Ch. 133, L. 1923; amd. Sec. 2, Ch. 6, L. 1953.

References

Wilkinson v. La Combe, 59 M 518, 520, 197 P 836; State ex rel. Mills v. Stewart, 64 M 453, 464, 210 P 465.

23-914. (646) Register of candidates is public record—disposition of poll-books, tally sheets, ballots, etc. Such registers of candidates for nomination, and of nominations and petitions, letters and notices, and other writings required by law as soon as filed, shall be public records, and shall be open to public inspection under proper regulations; and when a copy of any such writing is presented at the time the original is filed, or at any time thereafter, and a request is made to have such copy compared and certified, the officers with whom such writing was filed shall forthwith compare such copy with the original on file, and, if necessary, correct the copy and certify and deliver the copy to the person who presented it on payment of his lawful fees therefor. All such writings, poll-books, tally sheets, ballots, and ballot stubs pertaining to primary nominating elections under the provisions of this act shall be preserved as other records are for one (1) year after the election to which they pertain, at which time, unless otherwise ordered or restrained by some court, the county clerk shall destroy the ballots and ballot stubs, by fire, without any one inspecting the same.

History: En. Sec. 15, Initiative Measure Nov. 1912; re-en. Sec. 646, R. C. M. 1921; amd. Sec. 1, Ch. 75, L. 1949.

Collateral References

Elections § 126(4, 5, 7).
29 C.J.S. Elections §§ 114, 115, 118, 119.

References

Wilkinson v. La Combe, 59 M 518, 520, 197 P 836; State ex rel. Mills v. Stewart, 64 M 453, 464, 210 P 465.

23-915. (647) Vacancies in nominations, how filled. The provisions of sections 23-810 and 23-811 shall apply to nominations, or petitions for nominations, made under the provisions of this law, in case of the death of the candidate or his removal from the state or his county or electoral district before the date of the ensuing election, but in no other case. In case of any such vacancy by death or removal from the state, or from the county or electoral district, such vacancy may be filled by the committee which has been given power by the political party or this law to fill such vacancies substantially in the manner provided by said sections 23-810 and 23-811.

History: En. Sec. 16, Initiative Measure Nov. 1912; re-en. Sec. 647, R. C. M. 1921.

Operation and Effect

Neither this section nor section 32 of the primary election law (23-929) empowers a county central committee to make an original nomination of a candidate to an office to be filled at a special election, the officer-elect having died soon after election and before induction into

office. State ex rel. Smith v. Duncan, 55 M 376, 177 P 248.

References

Wilkinson v. La Combe, 59 M 518, 520, 197 P 836; State ex rel. Mills v. Stewart, 64 M 453, 464, 210 P 465.

Collateral References

Elections—146, 147.
29 C.J.S. Elections §§ 93-95.
18 Am. Jur. 261, Elections, § 128.

23-916. (648) Arrangement and notice of nominations. Not more than forty days and not less than twenty-five days before the day fixed by law for the primary nominating election the secretary of state shall arrange, in the manner provided by this law, for the arrangement of the names and other information upon the ballots, all the names of and information concerning all the candidates for nomination contained in the valid petitions for nomination which have been filed with him in accordance with the provisions of this law, and he shall forthwith certify the same under the seal of the state, and file the same in his office, and make and transmit a duplicate thereof by registered letter to the county clerk of each county in the state, and he shall also post a duplicate thereof in a conspicuous place in his office and keep the same posted until after said primary nominating election has taken place. In case of emergency the secretary of state may transmit such duplicate by telegraph.

History: En. Sec. 17, Initiative Measure Nov. 1912; re-en. Sec. 648, R. C. M. 1921; amd. Sec. 1, Ch. 12, L. 1925.

64 M 453, 464, 210 P 465; State ex rel. Bevan v. Mountjoy, 82 M 594, 597 et seq., 268 P 558.

References

Wilkinson v. La Combe, 59 M 518, 520, 197 P 836; State ex rel. Mills v. Stewart,

23-917. (649) Arrangement of ballots and notice. Not more than thirty days, and not less than twenty days before the day fixed by law for the primary nominating election, the county clerk of each county, or the city clerk of each city, as the case may be, subject to the provisions of this law, shall arrange in the manner provided by this law for the arrangement of the names and other information concerning all the candidates and parties named in the valid petitions for nomination which have been filed with him and those which have been certified to him by the secretary of state, in accordance with the provisions of this law; and he shall forthwith certify the same under the official seal of his office, and file the same in his office, and make and post a duplicate thereof in a conspicuous place in his office, and keep the same posted until after the primary nominating election has taken place; and he shall forthwith proceed and cause to be printed, according to law, the colored sample ballots and the official ballots required by this law.

History: En. Sec. 18, Initiative Measure Nov. 1912; re-en. Sec. 649, R. C. M. 1921; amd. Sec. 2, Ch. 12, L. 1925.

Collateral References

Elections—126(5).
29 C.J.S. Elections § 118.

References

Wilkinson v. La Combe, 59 M 518, 520, 197 P 836; State ex rel. Mills v. Stewart, 64 M 453, 464, 210 P 465.

23-918. (650) Supplies printed and furnished by county. All blanks, ballots, poll books and other supplies to be used at any primaries shall be provided, and all expenses necessarily incurred in the preparation for, or conducting such primaries shall be paid out of the treasury of the county in the same manner and by the same officers as in the case of elections.

History: En. Sec. 19, Initiative Measure Nov. 1912; re-en. Sec. 650, R. C. M. 1921; amd. Sec. 1, Ch. 34, L. 1945.

Collateral References

Elections § 126(5, 6).
29 C.J.S. Elections § 118.

References

Wilkinson v. La Combe, 59 M 518, 520,
197 P 836; State ex rel. Mills v. Stewart,
64 M 453, 464, 210 P 465.

23-919. (651) Ballots, how arranged, printed and voted. (1) At all primary elections there shall be a ballot made up of the several party tickets herein provided for, each of which shall be printed on a separate sheet of white paper, and all of which shall be the same size, and shall be securely fastened together at the top and folded, provided that there shall be as many separate tickets as there are parties entitled to participate in said primary election.

(2) The names of all candidates shall be arranged alphabetically according to surnames, under the appropriate title of the respective officers, and under the proper party designation upon the party ticket, except as hereinafter provided. When two or more persons are candidates for nomination for the same office, it shall be the duty of the county clerk in each of the counties of the state to divide the ballot forms provided by the law for the county, into sets so as to provide a substantial rotation of the names of the respective candidates as follows:

(3) He shall divide the whole number of ballot forms for the county into sets equal in number to the greatest number of candidates for the nomination or election to any office, and he shall so arrange said sets that the names of the candidates shall, beginning with a form arranged in alphabetical order as provided herein, be rotated by removing one name from the top of the list for each nomination or office and placing said name or number at the bottom of the list for each successive set of ballot forms; provided, however, that no more than one of said sets shall be used in printing the ballots for use in any one precinct, and that all ballots furnished for use in any precinct shall be of one form and identical in every respect. If any elector write upon his ticket the name of any person who is a candidate for the same office upon some other ticket then that upon which his name is so written this ballot shall be counted for such person only as a candidate of the party upon whose ticket his name is written, and in no case shall be counted for such person as a candidate upon any other ticket. In case any person is nominated as provided in this act, upon more than one ticket, he shall within ten (10) days after such election file with the secretary of state, county clerk or city clerk, a written document indicating the party designation under which his name is to be printed on the official ballot for the general election, failing in which, his name shall be printed upon the party ticket for which his nominating petition shall have been first filed, and no candidate shall have his name printed on more than one ticket; provided, however, that in the event a candidate whose name has been

printed upon the party ticket for which his nominating petition shall have been first filed shall fail of nomination upon the ticket upon which his name is so printed, his name shall not be printed upon any ballot under any party designation; and provided further that nothing in this act shall preclude any elector from having his name printed upon the ballot as an independent candidate.

(4) The ballots with the endorsements shall be printed on white paper in substantially the forms of the Australian ballot, used in general elections, except that the candidates of each party shall be printed on a separate ticket or sheet. After preparing his ballot the elector shall detach the same from the remaining tickets and fold it so that its face will be concealed and with official stamp thereon seen. The remaining tickets attached together shall be folded in like manner by the elector who shall thereupon, without leaving the polling place, vote the marked ballot forthwith, and deposit the remaining tickets in the separate ballot box to be marked and designated as the blank ballot box. Immediately after the canvass, the judges of election shall, without examination, destroy the tickets deposited in the blank ballot box.

History: En. Sec. 20, Initiative Measure Nov. 1912; re-en. Sec. 651, R. C. M. 1921; amd. Sec. 1, Ch. 133, L. 1923; amd. Sec. 1, Ch. 14, L. 1927; amd. Sec. 1, Ch. 67, L. 1929.

References

Wilkinson v. La Combe, 59 M 518, 520, 197 P 836; State ex rel. Mills v. Stewart, 64 M 453, 464, 210 P 465; State ex rel. McHale v. Ayers, 111 M 1, 4, 105 P 2d 866; State ex rel. Wulf v. McGrath, 111 M 96, 98, 106 P 2d 183.

Collateral References

Elections 126(5, 6).
29 C.J.S. Elections § 118.
18 Am. Jur. 287, Elections, §§ 162 et seq.

Constitutionality of statute relating to election ballots as regards place or number of appearances on the ballots of names of candidates. 78 ALR 398.

Name or form of name to be used in designating candidate on election ballot. 93 ALR 911.

23-920. (652) Official and sample ballots—preparation and number. There shall be printed and furnished for each election precinct a number of ballots equal to the number of voters registered in such voting precinct and entitled to vote at such primary nominating election.

If any political party shall desire sample ballots its political committee may order the same from the county clerk or city clerk who shall collect from such committee an amount sufficient to pay the cost of printing such sample ballots, and such sample ballots after being printed, shall, on the written order of the clerk, be delivered to the committee ordering the same, but no such sample ballot shall be printed except on the order of the county or city clerk. The sample ballots shall be duplicate impressions of the official ballots to be voted, but in no case shall they be white, nor shall said sample ballots have perforated stubs, nor shall they have the same margin either at the top or sides or bottom as the official ballots have, or nearer thereto than twelve points, and the names of the candidates on the tickets composing the same shall not be rotated as required for the official ballots, but shall be impressions of the tickets belonging to lot 1 of each party.

History: En. Sec. 21, Initiative Measure Nov. 1912; re-en. Sec. 652, R. C. M. 1921; amd. Sec. 1, Ch. 133, L. 1923.

References

Wilkinson v. La Combe, 59 M 518, 520, 197 P 836; State ex rel. Mills v. Stewart, 64 M 453, 464, 210 P 465.

Collateral References
Elections—126(5).29 C.J.S. Elections, § 118.
18 Am. Jur. 287, Elections, § 161.

23-921. (654) **Canvass of returns.** (1) On the third day after the close of any primary nominating election, or sooner if all the returns be received, the county clerk, taking to his assistance two justices of the peace of the county of different political parties, if practicable, or two members of the board of county commissioners of the county of different political parties, if possible, or one justice of the peace and one member of the board of county commissioners of the county of different political parties, if practicable, shall proceed to open said returns and make abstracts of the votes. Such abstracts of votes for nominations for governor and for senator in congress shall be on one separate sheet for each political party, and shall be immediately transmitted to the secretary of state in like manner as other election returns are transmitted to him. Such abstract of votes for nomination of each party for lieutenant governor, secretary of state, attorney general, state auditor, superintendent of public instruction, railroad commissioners, clerk of the supreme court, state treasurer, justices of the supreme court, members of congress, judges of the district court, and members of the legislative assembly, who are to be nominated from a district composed of more than one county, shall be on one sheet, separately for each political party, and shall be forthwith transmitted to the secretary of state, as required by the following section.

(2) The abstract of votes for county and precinct offices shall be on another sheet separately for each political party; and it shall be the duty of said clerk immediately to certify the nomination for each party and enter upon his register of nominations the name of each of the persons having the highest number of votes for nomination as candidates for members of the legislative assembly, county, and precinct offices, respectively, and to notify by mail each person who is so nominated; provided, that when a tie shall exist between two or more persons for the same nomination by reason of said two or more persons having an equal and the highest number of votes for nomination by one party to one and the same office, the county clerk shall give notice to the several persons so having the highest and equal number of votes to attend at his office at a time to be appointed by said clerk, who shall then and there proceed publicly to decide by lot which of the persons so having an equal number of votes shall be declared nominated by his party; and said clerk shall forthwith enter upon his register of nominations the name of the persons thus duly nominated, in like manner as though he had received the highest number of the votes of his party for that nomination; and it shall be the duty of the county clerk of every county, on receipt of the returns of any general primary nominating election, to make out his certificate stating therein the compensation to which the judges and clerks of election may be entitled for their services, and lay the same before the county board of county commissioners at its next term, and the said board shall order the compensation aforesaid to be paid out of the county treasury. In all primary nominating elections in this state, under the provisions of this law, the person having the highest number of votes for nomination to any office shall be deemed to have been nominated by his political party for that office.

History: En. Sec. 23, Initiative Measure Nov. 1912; re-en. Sec. 654, R. C. M. 1921; amd. Sec. 1, Ch. 181, L. 1937.

References

Wilkinson v. La Combe, 59 M 518, 520, 197 P 836; State ex rel. Mills v. Stewart, 64 M 453, 464, 210 P 465; State ex rel.

Wulf v. McGrath, 111 M 96, 98, 106 P 2d 183.

Collateral References

Elections—126(7).
29 C.J.S. Elections § 119.
18 Am. Jur. 346, Elections, §§ 252 et seq.

23-922. (655) Duties of county clerk after canvass of vote—state canvass. The county clerk, immediately after making the abstracts of votes given in his county shall make a copy of each of said abstracts and transmit it by mail to the secretary of state, at the seat of government; and it shall be the duty of the secretary of state, in the presence of the governor and the state treasurer, to proceed within fifteen days after the primary nominating election, and sooner, if all returns be received, to canvass the votes given for nomination for governor, senator in congress, lieutenant-governor, attorney general, superintendent of public instruction, railroad commissioners, secretary of state, state treasurer, state auditor, justices of the supreme court, clerk of the supreme court, members of Congress, judges of the district court, senators and representatives, and all other officers to be voted for by the people of the state, or of any district comprising more than one county; and the governor shall grant a certificate of nomination to the person having the highest number of votes for each office, and shall issue a proclamation declaring the nomination of each person by his party. In case there shall be no choice for nomination for any office by reason of any two or more persons having an equal and the highest number of votes of his party for nomination for either of said offices, the secretary of state shall immediately give notice to the several persons so having the highest and equal number of votes to attend at his office, either in person or by attorney, at a time to be appointed by said secretary, who shall then and there proceed to publicly decide by lot which of said persons so having an equal number of votes shall be declared duly nominated by his party; and the governor shall issue his proclamation declaring the nomination of such person or persons, as above provided.

History: En. Sec. 24, Initiative Measure Nov. 1912; re-en. Sec. 655, R. C. M. 1921.

References

Wilkinson v. La Combe, 59 M 518, 520, 197 P 836; State ex rel. Mills v. Stewart, 64 M 453, 464, 210 P 465.

Collateral References

Elections—126(7), 138.
29 C.J.S. Elections §§ 119, 135.

23-923. (656) Error in ballot or count. Whenever it shall appear by affidavit to the district court or judge thereof, or to the supreme court or judge thereof, that an error or omission has occurred or is about to occur in the printing of the name of any candidate or other matter on the official primary nominating election ballots or that any error has been or is about to be committed in the printing of the ballots, or that the name of any person or any other matter has been or is about to be wrongfully placed upon such ballots, or that any wrongful act has been performed by any judge or clerk of the primary election, county clerk, canvassing board or member thereof, or by any person charged with a duty under this act, or that any neglect of duty by any of the persons aforesaid has occurred or is

about to occur, such court or judge shall by order require the officer or person or persons charged with the error, wrongful act, or neglect, to forthwith correct the error, desist from the wrongful act, or perform the duty and do as the court shall order, or show cause forthwith why such error should not be corrected, wrongful act desisted from, or such duty or order performed. Failure to obey the order of any such court or judge shall be contempt. Any person in interest or aggrieved by the refusal or failure of any person to perform any duty or act required by this law shall, without derogation to any other right or remedy, be entitled to pray for a mandamus in the district court of appropriate jurisdiction, and any proceedings under the provisions of this law shall be immediately heard and decided.

History: En. Sec. 25, Initiative Measure Nov. 1912; re-en. Sec. 656, R. C. M. 1921.

References

Wilkinson v. La Combe, 59 M 518, 520, 197 P 836; State ex rel. Mills v. Stewart, 64 M 453, 464, 210 P 465.

Collateral References

Contempt ⇨ 20; Elections ⇨ 126(5);
Mandamus ⇨ 74(1).
17 C.J.S. Contempt § 12; 29 C.J.S. Elections § 118; 55 C.J.S. Mandamus § 142.
18 Am. Jur. 349, Elections, § 257.

23-924. (657) Secretary of state may send for returns. If the returns and abstracts of the primary nominating election of any county in the state shall not be received at the office of the secretary of state within twelve days after said election, the secretary of state shall forthwith send a messenger to the county board of such county, whose duty it shall be to furnish said messenger with a copy of said returns, and the said messenger shall be paid out of the county treasury of such county the sum of twenty cents for each mile he shall necessarily travel in going to and returning from said county. The county clerk, whenever it shall be necessary for him to do so in order to send said returns and abstracts within the time above limited, may send the same by telegraph, the message to be repeated, and the county shall pay the expense of such telegram.

History: En. Sec. 26, Initiative Measure Nov. 1912; re-en. Sec. 657, R. C. M. 1921.

References

Wilkinson v. La Combe, 59 M 518, 520, 197 P 836; State ex rel. Mills v. Stewart, 64 M 453, 464, 210 P 465.

Collateral References

Elections ⇨ 126(7).
29 C.J.S. Elections § 119.

23-925. (658) Penalty for official misconduct. If any judge or clerk of a primary nominating election, or other officers or persons on whom any duty is enjoined by this law, shall be guilty of any wilful neglect of such duty, or of any corrupt conduct in the discharge of the same, such judge, clerk, officer or other person, upon conviction thereof, shall be punished by imprisonment in the penitentiary not less than one year nor more than five years, or by imprisonment in the county jail not less than three months nor more than one year, or by fine not less than one hundred dollars nor more than five hundred dollars.

History: En. Sec. 27, Initiative Measure Nov. 1912; re-en. Sec. 658, R. C. M. 1921.

References

Wilkinson v. La Combe, 59 M 518, 520, 197 P 836; State ex rel. Mills v. Stewart, 64 M 453, 464, 210 P 465.

Collateral References

Elections 314.

29 C.J.S. Elections § 327.

23-926. (659) Notice of contest. Any person wishing to contest the nomination of any other person to any state, county, district, township, precinct, or municipal office may give notice in writing to the person whose nomination he intends to contest that his nomination will be contested stating the cause of such contest briefly, within five days from the time said person shall claim to have been nominated.

History: En. Sec. 28, Initiative Measure Nov. 1912; re-en. Sec. 659, R. C. M. 1921.

Stone v. District Court, 103 M 515, 518, 63 P 2d 147; State ex rel. Wulf v. McGrath, 111 M 96, 98, 106 P 2d 183.

References

Wilkinson v. La Combe, 59 M 518, 520, 197 P 836; State ex rel. Mills v. Stewart, 64 M 453, 464, 210 P 465; State ex rel.

Collateral References

Elections 151.
29 C.J.S. Elections §§ 123, 124, 141, 142.
18 Am. Jur. 369, Elections, § 291.

23-927. (660) Service of notice—contest—how heard. Said notice shall be served in the same manner as a summons issued out of the district court three days before any hearing upon such contest as herein provided shall take place, and shall state the time and place that such hearing shall be had. Upon the return of said notice served to the clerk of the court he shall thereupon enter the same upon his issue docket as an appeal case, and the same shall be heard forthwith by the district court; provided, that if the case cannot be determined by the district court in term time, within fifteen days after the termination of such primary nominating election, the judge of the district court may hear and determine the same at chambers forthwith, and shall make all necessary orders for the trial of the case and carrying his judgment into effect; provided, that the district court provision of this section shall not apply to township or precinct officers. In case of contest between any persons claiming to be nominated to any township or precinct office, said notice shall be served in the manner aforesaid, and shall be returned to the district court of the county.

History: En. Sec. 29, Initiative Measure Nov. 1912; re-en. Sec. 660, R. C. M. 1921.

NOTE.—Section 30 of this act is omitted from this code in conformity with the decision of the supreme court in Wilkinson v. La Combe, 59 M 518, 520, 197 P 836.

References

Wilkinson v. La Combe, 59 M 518, 520, 197 P 836; State ex rel. Mills v. Stewart, 64 M 453, 464, 210 P 465.

Collateral References

Elections 151, 154(1).
29 C.J.S. Elections §§ 123, 124, 141, 142, 148.
18 Am. Jur. 369, Elections, § 292.

23-928. (661) Contest—how tried and decided. Each party to such contest shall be entitled to subpoenas, and subpoenas duces tecum, as in ordinary cases of law; and the court shall hear and determine the same without the intervention of a jury, in such manner as shall carry into effect the expressed will of a majority of the legal voters of the political party, as indicated by their votes for such nominations, not regarding technicalities or errors in spelling the name of any candidate for such nomination; and the county clerk shall issue a certificate to the person declared to be duly nominated by said court, which shall be conclusive evidence of the right of said person to hold said nomination; provided, that the judgment or de-

cision of the district court in term time, or a decision of the judge thereof in vacation, as the case may be, may be removed to the supreme court in such manner as may be provided for removing such causes from the district court to the supreme court.

History: En. Sec. 31, Initiative Measure Nov. 1912; re-en. Sec. 661, R. C. M. 1921.

References

Wilkinson v. La Combe, 59 M 518, 520, 197 P 836; State ex rel. Mills v. Stewart, 64 M 453, 464, 210 P 465.

Collateral References

Elections \S 154(1-13).

29 C.J.S. Elections \S 120-129, 148.

18 Am. Jur. 359, Elections, \S 271 et seq.

Violation of law as regards time for keeping polls open as affecting election results. 66 ALR 1159.

Costs or reimbursement for expenses incident to election contests. 106 ALR 928.

23-929. (662) County and city central committeemen, how elected.

(1) There shall be elected by each political party subject to the provisions of this act, at said primary nominating election, two (2) committeemen, one (1) of which shall be a man and one (1) of which shall be a woman, for each election precinct, who shall be residents of such precincts. Any elector may be placed in nomination for committeeman and committeewoman of any precinct by a writing so stating, signed by such elector, and filed in the office of the county clerk within the time required in this act for the filing of petitions naming individuals as candidates for nomination at the regular biennial primary election. The names of the various candidates for precinct committeemen and committeewomen of each political party shall be printed on the ticket of the same in the same manner as other candidates and the voter shall express his choice among them in like manner as for such other candidates.

(2) The committeemen and committeewomen thus elected shall be the representatives of their political party in and for such precinct in all ward or subdivision committees that may be formed. The committeemen and committeewomen elected in each precinct in each county shall constitute the county central committee of each of said respective political parties. Those committeemen and committeewomen who reside within the limits of any incorporated city or town shall constitute ex-officio the city central committee of each of said respective political parties and shall have the same power and jurisdiction as to the business of their several parties in such city matters that the county committee have in county matters, save only the power to fill vacancies in said committee, which power is vested in the county central committee. Each committeeman and committeewoman shall hold such position for the term of two (2) years from the date of the first meeting of said committee immediately following their election.

(3) In case of a vacancy happening, on account of death, resignation, removal from the precinct, or otherwise, the remaining members of said county committee may select a committeeman or committeewoman to fill the vacancy and he shall be a resident of the precinct in which the vacancy occurs. Said county and city central committees shall have the power to make rules and regulations for the government of their respective political parties in each county and city, not inconsistent with any of the provisions of this law, and to elect two (2) county members of the state central committee, one (1) of which shall be a man and one (1) of

which shall be a woman, and the members of the congressional committee, and said committee shall have the same power to fill all vacancies and make rules in their jurisdiction that the county committees have to fill county vacancies and to make rules. In the event there is no county central committee in any county the state central committee of the political party having no county central committee in said county shall appoint a county central committee therein to consist of committeemen and committeewomen as herein provided and said county central committee shall have the same powers and duties as county central committee elected, as now provided by law.

(4) Said county and city central committee shall have the power to make nomination to fill vacancies occurring among the candidates of their respective parties nominated for city or county offices by the primary nominating election where such vacancy is caused by death, resignation or removal from the electoral district, but not otherwise.

(5) In each year when a president of the United States is to be elected, said committee shall meet within fifteen (15) days after the primary election herein provided for, and shall organize by electing a chairman and one (1) or more vice-chairmen, provided that either the chairman or first vice-chairman shall be a woman. They shall also elect a secretary and such other officers as they shall think proper. It shall not be necessary for such officers to be precinct committeemen or committeewomen. They may select managing or executive committees and authorize such subcommittees to exercise any and all powers conferred upon the county, city, state and congressional central committees respectively by this law. The chairman of the county central committee shall call said central committee meeting and not less than ten (10) days before the date of said central committee meeting shall publish said call in a newspaper published at the county seat and shall mail a copy of the call, enclosing a blank proxy, to each precinct committeeman. No proxy shall be recognized unless held by an elector of the precinct of the committeeman executing the same.

(6) The county chairman of the party shall preside at the county convention. No person other than a duly elected or appointed committeeman, committeewoman, or officer of the committee shall be entitled to participate in the proceedings of the committee. No proxy shall be recognized unless held by an elector of the precinct of the committeeman or committee-woman executing the same. In case of the absence of any committeeman or committeewoman and his or her duly appointed proxy, the convention may fill the vacancy by appointing some qualified elector of the party, resident in the precinct, to represent such precinct in the convention.

(7) The county convention shall elect delegates and alternate delegates to attend the state convention provided for herein, in a number equal to the total number of state senators and state representatives elected from said county to the legislative assembly. The chairman and secretary of the county convention shall issue and sign certificates of election of said delegates.

History: En. Sec. 32, Initiative Measure Nov. 1912; re-en. Sec. 662, R. C. M. 1921; amd. Sec. 1, Ch. 98, L. 1927; amd. Sec. 1, Ch. 34, L. 1929; amd. Sec. 1, Ch. 6,

L. 1933; amd. Sec. 1, Ch. 84, L. 1939; amd. Sec. 1, Ch. 64, L. 1951; amd. Sec. 3, Ch. 266, L. 1955.

Operation and Effect

Neither this section nor section 16 of the primary election law empowers a county central committee to make an original nomination of a candidate to an office to be filled at a special election, the officer-elect having died soon after election and before induction into office. State ex rel. Smith v. Duncan, 55 M 376, 177 P 248.

Resignation of Successful Write-in Candidate Who Filed Too Late Does Not Create Vacancy

Where a successful write-in candidate at a nominating election failed to file his

acceptance within ten days after election day, his subsequent resignation did not result in a vacancy which the county central committee of his party could fill under this section. State ex rel. Wilkinson v. McGrath, 111 M 102, 106 P 2d 186.

References

Wilkinson v. La Combe, 59 M 518, 520, 197 P 836; State ex rel. Mills v. Stewart, 64 M 453, 464, 210 P 465.

Collateral References

Elections—121(1, 2).
29 C.J.S. Elections §§ 83, 84, 86-88.
18 Am. Jur. 269, Elections, §§ 138 et seq.

23-930. (663) National committeemen—selection and term. The state central committee of each political party in the state of Montana shall select one national committeeman and one national committeewoman. The chairman of the state central committee shall at once file with the national committee the names of the national committeeman and national committeewoman so selected, and it shall be the duty of the chairman of the delegation to the national convention of each political party to report to the national convention the names of the persons so selected to be the national committeeman and the national committeewoman of his political party for the state of Montana. Said committeeman and committeewoman shall represent said political party as members of the national committee of said party and shall be selected in each year in which a president and vice-president of the United States are elected, and such selection shall be made prior to the meeting of the national conventions of the respective political parties. The national committeeman and committeewoman shall hold office for a term of four years.

History: En. Sec. 1, Ch. 1, Ex. L. 1921; re-en. Sec. 663, R. C. M. 1921; amd. Sec. 1, Ch. 159, L. 1925.

References

Wilkinson v. La Combe, 59 M 518, 520, 197 P 836; State ex rel. Mills v. Stewart, 64 M 453, 464, 210 P 465.

Collateral References

Elections—121(2).
29 C.J.S. Elections §§ 86, 87.
18 Am. Jur. 269, Elections, §§ 138 et seq.

23-931. (665) Penalty for violation of law. If any candidate for nomination shall be guilty of any wrongful or unlawful act or acts at a primary nominating election which would be sufficient, if such wrongful or unlawful act or acts had been done by such candidate at the regular general election, to cause his removal from office, he shall, upon conviction thereof, be removed from office in like manner as though such wrongful or unlawful act or acts had been committed at a regular general election, notwithstanding that he may have been regularly elected and shall not have been guilty of any wrongful or unlawful act at the election at which he shall have been elected to his office.

History: En. Sec. 33, Initiative Measure Nov. 1912; re-en. Sec. 665, R. C. M. 1921.

References

Wilkinson v. La Combe, 59 M 518, 520, 197 P 836; State ex rel. Mills v. Stewart, 64 M 453, 464, 210 P 465.

Collateral References
Officers—66.

67 C.J.S. Officers § 60.

23-932. (666) Candidates to formulate state platform. The candidates for the various state offices, and for the United States senate, representatives in Congress and the legislative assembly nominated by each political party at such primary, and senators of such political party, whose term of office extends beyond the first Monday in January of the year next ensuing, and the members of the state central committee of such political party, shall meet at the call of the chairman of the state central committee not later than September fifteenth next preceding any general election. They shall forthwith formulate the state platform of their party. They shall thereupon proceed to elect a chairman and vice chairman, provided that either the chairman or vice chairman shall be a woman, of the state central committee and perform such other business as may properly be brought before such meeting.

History: En. Sec. 34, Initiative Measure Nov. 1912; re-en. Sec. 666, R. C. M. 1921; amd. Sec. 1, Ch. 8, L. 1953.

Collateral References

Elections—121(1).

29 C.J.S. Elections §§ 83, 84.

References

Wilkinson v. La Combe, 59 M 518, 520, 197 P 836; State ex rel. Mills v. Stewart, 64 M 453, 464, 210 P 465.

23-933. (667) Penalty for bribery, etc. Any person who shall offer, or with knowledge of the same permit any person to offer for his benefit, any bribe to a voter to induce him to sign any nomination paper, and any person who shall accept any such bribe or promise of gain of any kind in the nature of a bribe as consideration for signing the same, whether such bribe or promise of gain in the nature of a bribe be offered or accepted before or after such signing, shall be guilty of a misdemeanor, and upon trial and conviction thereof be punished by a fine of not less than twenty-five nor more than one thousand dollars, and by imprisonment in the county jail of not less than ten days nor more than six months.

History: En. Sec. 35, Initiative Measure Nov. 1912; re-en. Sec. 667, R. C. M. 1921.

Treating of voters by candidate for office as violation of corrupt practices or similar acts. 2 ALR 402.

Constitutionality of corrupt practices acts. 69 ALR 377.

Construction of statute prohibiting solicitation or acceptance of contributions or subscriptions by public officer or employee. 85 ALR 1146.

Statements by candidates regarding salaries or fees of office as violation of corrupt practices acts or bribery. 100 ALR 493.

Construction and application of provisions of corrupt practices act regarding contributions by corporations. 125 ALR 1029.

Cross-Reference

Bribery at elections, penalty, sec. 94-1423.

References

Wilkinson v. La Combe, 59 M 518, 520, 197 P 836; State ex rel. Mills v. Stewart, 64 M 453, 464, 210 P 465.

Collateral References

Elections—316.

29 C.J.S. Elections § 332.

18 Am. Jur. 336, Elections, §§ 235 et seq.

23-934. (668) General penal laws applicable. Any act declared an offense by the general laws of this state concerning caucuses, primaries and elections shall also, in like case, be an offense in and as to all primaries as herein defined, and shall be punished in the same form and manner as

therein provided, and all the penalties and provisions of the law as to such caucuses, primaries and elections, except as herein otherwise provided, shall apply in such case with equal force, and to the same extent as though fully set forth in this act.

History: En. Sec. 36, Initiative Measure Nov. 1912; re-en. Sec. 668, R. C. M. 1921.

Collateral References

Elections 309 et seq.
29 C.J.S. Elections §§ 324, 334.

References

Wilkinson v. La Combe, 59 M 518, 520, 197 P 836; State ex rel. Mills v. Stewart, 64 M 453, 464, 210 P 465.

23-935. (669) Forgery and suppression of nomination papers. Any person who shall forge any name of a signer or a witness to a nomination paper shall be guilty of forgery, and on conviction punished accordingly. Any person who, being in possession of nomination papers entitled to be filed under this act, or any act of the legislature, shall wrongfully either suppress, neglect or fail to cause the same to be filed at the proper time in the proper office, shall, on conviction, be punished by imprisonment in the county jail not to exceed six months, or by a fine not to exceed one thousand dollars, or by both such fine and imprisonment in the discretion of the court.

History: En. Sec. 37, Initiative Measure Nov. 1912; re-en. Sec. 669, R. C. M. 1921.

References

Wilkinson v. La Combe, 59 M 518, 520, 197 P 836; State ex rel. Mills v. Stewart, 64 M 453, 464, 210 P 465.

Cross-Reference

False nomination certificate, penalty, sec. 94-1412.

Collateral References

Elections 309; Forgery 7(1).
29 C.J.S. Elections §§ 324, 334; 73 C.J.S. Forgery, §§ 18, 20.

23-936. (670) General laws applicable to this enactment. The provisions of the laws of this state now in force in relation to the holding of elections, the solicitation of voters at the polls, the challenging of voters, the manner of conducting elections, of counting the ballots and making return thereof, the appointment and compensation of officers of election, and all other kindred subjects, shall apply to all primaries, insofar as they are consistent with this act, the intent of this act being to place the primary under the regulation and protection of the laws now in force as to elections.

History: En. Sec. 38, Initiative Measure Nov. 1912; re-en. Sec. 670, R. C. M. 1921.

64 M 453, 464, 210 P 465; Thompson v. Chapin, 64 M 376, 383, 209 P 1060.

References

Wilkinson v. La Combe, 59 M 518, 520, 197 P 836; State ex rel. Mills v. Stewart,

Collateral References

Elections 126(1-7).
29 C.J.S. Elections §§ 111-119, 130-134.

CHAPTER 10

PRESIDENTIAL ELECTORS AND DELEGATES TO NATIONAL CONVENTIONS

Section 23-1001. Political party defined.

23-1002. Exclusive method of selecting presidential electors and delegates to national political conventions—committeemen and chairmen.

23-1003 to 23-1005. Repealed.

23-1006. Time of state convention—election of presidential electors and delegates to national convention.

23-1007. Conduct of state convention.

23-1008. Payment of convention expenses.

23-1001. (673.1) Political party defined. The term political party as used in this act, shall include any party conducted for political purposes, which now has or hereafter shall perfect a national organization.

History: En. Sec. 1, Ch. 126, L. 1927.

Operation and Effect

Where the legislature at the same session passes two statutes relating to the same subject matter, it may not be presumed that by enacting the second, without making reference to the first, it intended to limit the scope of the first, but the two must be read together and harmonized, and under that rule held that

chapter 7, Laws of 1927 (sec. 23-909), and this section providing for a method of electing presidential electors, etc., are not in irreconcilable conflict. State ex rel. Foster et al. v. Mountjoy, 83 M 162, 166, 271 P 446.

Collateral References

Elections↪121(1).

29 C.J.S. Elections § 84.

18 Am. Jur. 264, Elections, §§ 132 et seq.

23-1002. (673.2) Exclusive method of selecting presidential electors and delegates to national political conventions—committeemen and chairmen. All political parties in Montana shall hereafter nominate their presidential electors and elect their delegates to national conventions in the manner provided by this act. It shall be the duty of each political party to select in each county in the state in such manner as is now provided by law, or by the rules of the party in case the law does not so provide, a precinct committeeman and precinct committeewoman for each election precinct, a county chairman in each county and a state chairman.

History: En. Sec. 2, Ch. 126, L. 1927; amd. Sec. 13, Ch. 214, L. 1953 (Referendum Measure adopted November 2, 1954 effective December 7, 1954); amd. Sec. 4, Ch. 266, L. 1955.

Collateral References

Elections↪121(2); United States↪25.

29 C.J.S. Elections §§ 86-88; 65 C.J.

United States § 30.

23-1003 to 23-1005. (673.3 to 673.5) Repealed—Chapter 266, Laws of 1955.

Repeal

These sections (Secs. 3 to 5, Ch. 126, L. 1927; amd. Sec. 2, Ch. 64, L. 1951), relat-

ing to county conventions, were repealed by Sec. 8, Ch. 266, Laws 1955.

23-1006. (673.6) Time of state convention—election of presidential electors and delegates to national convention. Not later than fifteen (15) days after said county convention and on a date set by the chairman of the state central committee, the delegates (or alternate delegates, in case any elected delegate cannot attend), shall hold a state convention at the state capitol in Helena, Montana, for the purpose of electing delegates and alternates to the national convention of the parties and presidential electors. The delegates and alternate delegates to the national conventions of each political party shall consist of three (3) delegates from each of the congressional districts, and the remaining delegates and alternates from the state at large. The delegates and alternate delegates so elected shall support the candidate whose candidacy is preferred as a result of the within primary until released by said candidate or unless said candidate shall not be nominated by said national convention or shall receive less than twenty per cent (20%) of the total votes cast on any ballot.

History: En. Sec. 6, Ch. 126, L. 1927; amd. Sec. 1, Ch. 55, L. 1953; amd. Sec. 14, Ch. 214, L. 1953 (Referendum Measure adopted November 2, 1954 effective December 7, 1954); amd. Sec. 5, Ch. 266, L. 1955.

Collateral References

Elections § 128.
29 C.J.S. Elections §§ 97, 100.

23-1007. (673.7) Conduct of state convention. Said state convention shall be conducted in accordance with the party rules, subject, however, to the following requirements:

The chairman of the state central committee shall call the state convention and shall publish the call at least once in a newspaper published at the seat of the government. Said call shall be published not less than ten (10) days, and a copy of the call shall be mailed to the county chairman in each county. The chairman of the state central committee shall preside over the convention and, together with a secretary chosen by the convention, shall sign certificates of election, which shall be delivered as credentials to the several persons elected by the convention as delegates to the national convention of said party, and certificates of nomination for presidential electors for said party which shall be filed with the secretary of state. Only regularly elected delegates or alternates shall be entitled to sit in said convention or participate in its proceedings and no proxies shall be recognized by the convention. In case of the absence of a member or members of the delegation elected from any county the delegates present for said county shall be entitled to cast a number of votes equal to the number of delegates elected to the convention from said county.

History: En. Sec. 7, Ch. 126, L. 1927; amd. Sec. 15, Ch. 214, L. 1953 (Referendum Measure adopted November 2, 1954 effective December 7, 1954); amd. Sec. 6, Ch. 266, L. 1955.

Collateral References

Elections §§ 130, 131.
29 C.J.S. Elections §§ 98, 99.
18 Am. Jur. 267, Elections, §§ 135 et seq.

23-1008. (673.8) Payment of convention expenses. The entire expense of conducting the county and state conventions herein provided for shall be defrayed by the several political parties, except that each elected delegate or alternate who shall attend the state convention and participate therein shall receive the sum of seven (7) cents per mile for each mile actually travelled by him in going to and returning from said convention, said mileage to be computed by the shortest practicable route, and to be paid out of the general funds of the county in the same manner as other election expenses.

History: En. Sec. 8, Ch. 126, L. 1927; amd. Sec. 16, Ch. 214, L. 1953 (Referendum Measure, adopted November 2, 1954 effective December 7, 1954); amd. Sec. 7, Ch. 266, L. 1955.

Collateral References

Counties §§ 153½; Elections §§ 128.
20 C.J.S. Counties § 236; 29 C.J.S. Elections § 97.

CHAPTER 11

BALLOTS, PREPARATION AND FORM

- Section 23-1101. Ballots, how printed and distributed.
23-1102. County clerk to provide printed ballots.
23-1103. Municipal clerk to act in municipal elections.
23-1104. Pastors to be printed and distributed where vacancy has been filled.
23-1105. Form, color and size of ballot.

- 23-1106. Names and party of candidates to be printed on ballot.
- 23-1107. Arrangement of names—rotation on ballot.
- 23-1108. Placement on ballot of candidates for state senate or house of representatives.
- 23-1109. Columns and material to be printed on ballot.
- 23-1110. Words to be printed.
- 23-1111. Order of placement.
- 23-1112. Ballot to facilitate expression of voter's choice.
- 23-1113. Blank space and margin.
- 23-1114. Stub, size and contents.
- 23-1115. Uniformity of size and printing.
- 23-1116. County clerk to prepare ballot, when and how.
- 23-1117. Number of ballots to be provided for each precinct.

23-1101. (677) Ballots, how printed and distributed. All ballots cast in elections for public officers within the state (except school district officers), must be printed and distributed at public expense as provided in this chapter. The printing of ballots and cards of instruction for the elections in each county, and the delivery of the same to the election officers is a county charge, and the expense thereof must be paid in the same manner as the payment of other county expenses, but the expense of printing and delivering the ballots must, in the case of municipal elections, be a charge upon the city or town in which such election is held.

History: En. Sec. 1, p. 135, L. 1889; re-en. Sec. 1350, Pol. C. 1895; re-en. Sec. 541, Rev. C. 1907; re-en. Sec. 677, R. C. M. 1921. Cal. Pol. C. Sec. 1185.

Collateral References

Elections—163.
29 C.J.S. Elections § 155.
18 Am. Jur. 286, Elections, §§ 158 et seq.

23-1102. (678) County clerk to provide printed ballots. Except as in this chapter otherwise provided, it shall be the duty of the county clerk of each county to provide printed ballots for every election for public officers in which electors or any of the electors within the county participate, and to cause to be printed on the ballot the names of all candidates, including candidates for chief justice and associate justices of the supreme court and judges of the district courts, whose names have been certified to, or filed with the county clerk, in the manner provided in this chapter. Ballots other than those printed by the respective county clerks, according to the provisions of this chapter, must not be cast or counted in any election. Any elector may write or paste on his ballot the name of any person for whom he desires to vote for any office, but must mark the same as provided in section 23-1210, and when a ballot is so marked it must be counted the same as though the name is printed upon the ballot and marked by the voter. Any voter may take with him into the polling-place any printed or written memorandum or paper to assist him in marking or preparing his ballot except as otherwise provided in the chapter.

History: En. Sec. 1351, Pol. C. 1895; re-en. Sec. 542, Rev. C. 1907; re-en. Sec. 678, R. C. M. 1921; amd. Sec. 1, Ch. 203, L. 1937; amd. Sec. 1, Ch. 81, L. 1939. Cal. Pol. C. Sec. 1196.

References

Cited or applied as section 1351, Political Code, in State ex rel. Brooks v. Fransham, 19 M 273, 286, 48 P 1; Sawyer Stores, Inc. v. Mitchell, 103 M 148, 155, 62 P 2d 342.

Operation and Effect

By statute a uniform ballot has been adopted, to be printed and distributed at public expense, and no others than those so provided can be cast or counted. *Harrington v. Crichton*, 53 M 388, 391, 164 P 537.

Collateral References

Elections—163, 172, 181, 216.
29 C.J.S. Elections §§ 155, 161, 180, 205.

23-1103. (679) Municipal clerk to act in municipal elections. In all municipal elections the city clerk must perform all the duties prescribed for county clerks in this chapter.

History: En. Sec. 1352, Pol. C. 1895; re-en. Sec. 543, Rev. C. 1907; re-en. Sec. 679, R. C. M. 1921.

Collateral References
Elections[Ⓒ]163.
29 C.J.S. Elections § 155.

23-1104. (680) Pastors to be printed and distributed where vacancy has been filled. When any vacancy occurs before election day and after the printing of the ballots, and any person is nominated according to the provisions of this code to fill such vacancy, the officer whose duty it is to have the ballots printed and distributed must thereupon have printed a requisite number of pasters containing the name of the new nominee, and must mail them by registered letter to the judges of election in the various precincts interested in such election, and the judges of election, whose duty it is made by the provisions of this chapter to distribute the ballots, must affix such pasters over the name for which substitution is made in the proper place on each ballot before it is given out to the elector.

History: En. Sec. 1353, Pol. C. 1895; re-en. Sec. 544, Rev. C. 1907; re-en. Sec. 680, R. C. M. 1921.

Collateral References
Elections[Ⓒ]182.
29 C.J.S. Elections § 179.

References

Referred to as section 1353, Political Code, in State ex rel. Scharnikow v. Hogan, 24 M 397, 403, 62 P 683.

23-1105. (681) Form, color and size of ballot. Ballots for all general elections prepared under the provisions of this chapter must be white in color and of a good quality of paper and the names must be printed thereon in black ink. The ballots used in any one county must be uniform in size and every ballot must contain the name of every candidate whose nomination for any special office specified in the ballot has been certified or filed according to the provisions of law and no other names, except that the names of candidates for president and vice-president of the United States shall appear on the ballot as provided for by section 23-2101.

History: Ap. p. Sec. 17, p. 139, L. 1889; amd. Sec. 1354, Pol. C. 1895; amd. Sec. 1354, p. 117, L. 1901; amd. Sec. 2, Ch. 88, L. 1907; re-en. Sec. 545, Rev. C. 1907; re-en. Sec. 681, R. C. M. 1921; amd. Sec. 2, Ch. 81, L. 1939; re-en. Sec. 1, Ch. 141, L. 1947; amd. Sec. 1, Ch. 79, L. 1949. Cal. Pol. C. Sec. 1197.

Operation and Effect

The so-called anti-fusion statute, consisting of this section and the five following sections, was not impliedly repealed by the primary election law of 1913, and is not unconstitutional. State ex rel. Metcalf v. Wileman, 49 M 436, 437, 143 P 565.

References

Cited or applied as section 1354, Political Code, before amendment, in State ex rel. Brooks v. Fransham, 19 M 273, 286, 48 P 1; as Laws of 1901, p. 117, before amendment, in State ex rel. Riley v. Weston, 31 M 218, 226, 78 P 487; as section 545, Revised Codes, in Harrington v. Crichton, 53 M 388, 391, 164 P 537.

Collateral References

Elections[Ⓒ]166 et seq.

NOTE.—Sections 23-1105 to 23-1116 were originally part of section 545, Revised Codes, 1907, which has been divided.

Cross-References

Constitutional amendments, separate ballot prohibited, sec. 37-105.

Initiative and referendum, ballot, sec. 37-107.

Separate ballot for bonds and levies, sec. 37-107.

29 C.J.S. Elections § 156 et seq.
 18 Am. Jur. 287, Elections, §§ 162 et seq.

Constitutionality of statute relating to election ballots as regards place or number

of appearances on the ballots of names of candidates. 78 ALR 398.

Name or form of name to be used in designating candidate on election ballot. 93 ALR 911.

23-1106. Names and party of candidates to be printed on ballot. The name of each candidate nominated shall be printed upon the ballot in but one place and there shall be added after and directly opposite to the name of each candidate nominated, the party or political designation contained in the certificate of nomination of such candidate in not more than three (3) words, except that the political designation of electors for president and vice-president of the United States shall be opposite the whole list thereof, and the names of candidates for chief justice, associate justices, and district court judges shall each be followed by the following words directly underneath the name of the candidate: "Nominated without party designation." It is provided, however, that whenever any person is nominated for the same office by more than one party the designation of the party which first nominated him shall be placed opposite his name unless he declines in writing, one or more of such nominations, or by written election indicates the party designation which he desires printed opposite his name; or if he is nominated by more than one party at the same time he shall within the time fixed by law for filing certificates of nomination, file with the officer with whom his certificate of nomination is required to be filed, a written election indicating the party designation which he desires printed opposite his name, and it shall be so printed. If he shall fail or neglect to file such an election no party designation shall be placed opposite his name.

History: En. Sec. 2, Subd. A, Ch. 81, L. 1947; amd. Sec. 1, Subd. A, Ch. 79, L. 1939; re-en. Sec. 1, Subd. A, Ch. 141, L. 1949.

23-1107. Arrangement of names—rotation on ballot. The names of all candidates shall be arranged alphabetically according to surnames under the appropriate title of the respective offices. It is provided, however, that, while all of the candidates for the particular office shall remain together in the same box, yet the candidates of the two major parties shall appear on the ballot before and above the candidates of the minor parties and independent candidates. For the purpose of designating the candidates of the two major parties, they shall be those candidates of the two parties whose candidates for governor, excluding independent candidates, have been either first or second, (by receiving the highest or next highest number of votes cast for the office of governor at the particular election) the greatest number of times at the next preceding four (4) general elections. In case of a tie in the number of first or second places, the determination shall be made by going back enough preceding elections to break the tie and no farther. All other candidates shall be designated as either independent candidates or as belonging to minor parties. When two or more persons are candidates for election to the same office, including presidential and vice-presidential candidates, it shall be the duty of the county clerk in each of the counties of the state to divide the ballot forms provided by the law for the county, into sets so as to provide a substantial rotation of the names of the respective candidates as follows:

He shall divide the whole number of ballot forms for the county into sets equal in number to the greatest number of candidates for any office, and he shall so arrange said sets that the names of the candidates shall, beginning with a form arranged in alphabetical order, (for the purposes of rotation of presidential and vice-presidential candidates, the office of president and vice-president, together with presidential electors shall be considered as a group and alphabetized under the name of the candidate for president), be rotated by removing one name from the top of the list for each office and placing said name or number at the bottom of that list for each successive set of ballot forms; provided, however, that no more than one of said sets shall be used in printing the ballot for use in any one precinct, and that all ballots furnished for use in any precinct shall be of one form and identical in every respect. It is further provided that candidates of the two major parties as hereinabove defined shall be rotated as one group and the candidates of the minor parties and independent candidates shall be rotated as another group so that the candidates of the two major parties for a particular office shall appear on the ballot before and above any candidates of the minor parties or independent candidates.

History: En. Sec. 2, Subd. B, Ch. 81, L. 1947; amd. Sec. 1, Subd. B, Ch. 79, L. 1939; amd. Sec. 1, Subd. B, Ch. 141, L. 1949.

23-1108. Placement on ballot of candidates for state senate or house of representatives. At any state or county election in which a member of the state senate or house of representatives is to be elected or nominated, and subject to the provisions of sections 23-919 and 23-1105, the list of candidates for such offices shall be arranged on the ballot immediately following the other state offices and shall precede any county office on such ballot.

History: En. Sec. 1, Ch. 170, L. 1939.

Collateral References

Elections—167.

29 C.J.S. Elections § 158.

23-1109. Columns and material to be printed on ballot. Each ballot shall contain at the top the stub as provided by section 23-1114, and directly underneath the perforated line shall be the following words in bold face type, "VOTE IN ALL COLUMNS." Each ballot shall contain three (3) columns. At the head of the first column to the left shall be the words, "STATE AND NATIONAL," in large bold face type, followed by a list of all candidates for state and national offices, including supreme court justices, and district court judges, and such list shall progressively continue on to the top of the second column. Following the list of state and national candidates shall be the words "COUNTY AND TOWNSHIP," in large bold face type, and beneath such heading shall be listed all candidates for the legislative assembly, county and township offices and such list shall progressively continue on to the top of the third column. Following the list of county and township candidates shall be the words "INITIATIVES, REFERENDUMS, AND CONSTITUTIONAL AMENDMENTS," in large bold face type, and listed thereunder shall be all proposed constitutional amendments and measures to be voted on by the people at such election which do not involve the creation of any state levy, debt or liability. In case there are no such measures to be submitted, the said heading entitled "INITIATIVES, REFERENDUMS, AND CONSTI-

TUTIONAL AMENDMENTS," shall be eliminated. Every ballot shall be so printed that all matter heretofore required to be printed on each ballot shall be equally apportioned among the three columns as nearly as possible in the order heretofore and hereafter specified. All such measures which involve the creation of a state levy, debt or liability shall be submitted to the qualified voters upon a separate official ballot in substantial conformity with the form provided for by section 23-1112, for the submission of such measures.

History: En. Sec. 2, Subd. C, Ch. 81, L. 1947; amd. Sec. 1, Subd. C, Ch. 79, L. 1939; amd. Sec. 1, Subd. C, Ch. 141, 1949; amd. Sec. 1, Ch. 72, L. 1953.

23-1110. Words to be printed. At the bottom of the first and second column to the left shall be the words, "VOTE IN THE NEXT COLUMN." Likewise, at the top of the second column shall be the words "STATE AND NATIONAL (continued)" and at the top of the third column shall be the words "COUNTY AND TOWNSHIP (continued)" to indicate the continuation of the list of candidates under each respective heading to the following column if after all the printed matter is equally apportioned among the three columns, one column is insufficient to contain all the candidates listed under each of the aforementioned headings.

History: En. Sec. 2, Subd. D, Ch. 81, L. 1947; amd. Sec. 1, Subd. D, Ch. 79, L. 1939; re-en. Sec. 1, Subd. D, Ch. 141, L. 1949; amd. Sec. 2, Ch. 72, L. 1953.

23-1111. Order of placement. The order of the placement of the offices on the ballot in the first column, or to the left, designated "STATE AND NATIONAL," shall be as follows: "President and vice-president, together with the presidential electors; United States senator; United States representative in congress; governor; lieutenant governor; secretary of state; attorney general; state treasurer; state auditor; railroad and public service commissioners; state superintendent of public instruction; clerk of the supreme court; chief justice of the supreme court; associate justice or justices of the supreme court; district court judges"; provided, however, that in the years in which any of such offices are not to be elected, such offices shall not be designated, but the order of those offices to be filled shall maintain their relative positions as herein provided.

In the second column, designated, "COUNTY AND TOWNSHIP," the following order of placement shall be observed: "state senator; member or members of the house of representatives; clerk of district court; county commissioner; county clerk and recorder; sheriff; county attorney; county auditor." Such other offices to be elected shall be placed following the foregoing in the order deemed most appropriate by the county clerk. In the third column constitutional amendments shall come first with referendum and initiative measures following.

History: En. Sec. 2, Subd. E, Ch. 81, L. 1939; re-en. Sec. 1, Subd. E, Ch. 141, L. 1947; amd. Sec. 1, Subd. E, Ch. 79, L. 1949.

23-1112. Ballot to facilitate expression of voter's choice. In case of a short term and a long term election for the same office, the long term office shall precede the short term. The ballots shall be so printed as to give each voter a clear opportunity to designate his choice of candidates by a

cross mark, (X) in a square at the left of the name of each candidate. Above each group of candidates for each office shall be printed the words designating the particular office in bold face capital letters and directly underneath the words, "VOTE FOR" followed by the number to be elected to such office. As nearly as possible the ballot shall be in the following form:

(Stub hereinafter provided for by section 23-1114)

Perforated Line

VOTE IN ALL COLUMNS

STATE AND NATIONAL	STATE AND NATIONAL (Continued)	COUNTY AND TOWNSHIP (Continued)
FOR PRESIDENTIAL ELECTORS TO VOTE FOR PRESIDENT AND VICE-PRESIDENT OF THE UNITED STATES VOTE FOR ONE Democrat for President of the United States <div style="border: 1px solid black; padding: 2px;"> JOHN DOE For Vice-President of the United States. RICHARD ROE </div> For Presidential Electors: Jane Doe, Helen Doe, Pete Moe, Milton Moe (Same with other candidates for President and Vice - President together with blank space for write-in) FOR UNITED STATES SENATOR VOTE FOR ONE <input type="checkbox"/> Frank Roe Democrat <input type="checkbox"/> Guy Doe Republican <input type="checkbox"/> (Same for Congressmen, Governor, Lieut. Governor, Secretary of State, Attorney - General, State Treasurer, State Auditor, Railroad and Public Service Commissioners, State Superintendent of Public Instruction, and Clerk of the Supreme Court) VOTE IN NEXT COLUMN	FOR CHIEF JUSTICE OF THE SUPREME COURT VOTE FOR ONE <input type="checkbox"/> RICHARD K. O'DOE (Nominated without Party designation) <input type="checkbox"/> TOM ROW (Nominated without Party designation) <input type="checkbox"/> (Continued in like manner for Associate Justice and Judges of the District Court) COUNTY AND TOWNSHIP FOR STATE SENATOR VOTE FOR ONE <input type="checkbox"/> Bill Doe Republican <input type="checkbox"/> John Roe Democrat <input type="checkbox"/> FOR MEMBER OF THE HOUSE OF REPRESENTATIVES VOTE FOR TWO <input type="checkbox"/> Al Johnson Republican <input type="checkbox"/> Jim Sparks Democrat <input type="checkbox"/> Jack Smith Republican <input type="checkbox"/> Dan Martin Democrat <input type="checkbox"/> <input type="checkbox"/> VOTE IN NEXT COLUMN	(Continued in like manner for all County and Township Officers) INITIATIVES, REFERENDUMS AND CONSTITUTIONAL AMENDMENTS CONSTITUTIONAL AMENDMENTS <input type="checkbox"/> For the Amendment <input type="checkbox"/> Against the Amendment REFERENDUM NO. 1. <input type="checkbox"/> For Referendum No. 1 <input type="checkbox"/> Against Referendum No. 1 INITIATIVE NO. 1 <input type="checkbox"/> For Initiative No. 1 <input type="checkbox"/> Against Initiative No. 1

History: En. Sec. 2, Subd. F, Ch. 81, L. 1947; amd. Sec. 1, Subd. F, Ch. 79, L. 1939; re-en. Sec. 1, Subd. F, Ch. 141, L. 1949; amd. Sec. 3, Ch. 72, L. 1953.

23-1113. (683) Blank space and margin. Below the names of candidates for each office there must be left a blank space large enough to contain as many written names of candidates as there are persons to be elected. There must be a margin on each side of at least half an inch in width, and a reasonable space between the names printed thereon, so that the voter

may clearly indicate, in the way hereinafter provided, the candidate or candidates for whom he wishes to cast his ballot.

History: Ap. p. Sec. 17, p. 139, L. 1889; amd. Sec. 1354, Pol. C. 1895; amd. Sec. 1354, p. 117, L. 1901; amd. Sec. 2, Ch. 88, L. 1907; re-en. Sec. 545, Rev. C. 1907; re-en. Sec. 683, R. C. M. 1921. Cal. Pol. C. Sec. 1197.

Collateral References

Elections 170.
29 C.J.S. Elections § 156.

23-1114. (684) Stub, size and contents. The ballot shall be printed on the same leaf with a stub, and separated therefrom by a perforated line. The part above the perforated line, designated as the stub, shall extend the entire width of the ballot, and shall be of sufficient depth to allow the following instructions to voters to be printed thereon, such depth to be not less than two inches from the perforated line to the top thereof, upon the face of which stub shall be printed, in type known as brevier capitals, the following: "This ballot should be marked with an 'X' in the square before the name of each person or candidate for whom the elector intends to vote. In cases of a ballot containing a constitutional amendment, or other question to be submitted to a vote of the people, by marking an 'X' in the square before the answer of the question or amendment submitted. The elector may write in the blank spaces, or paste over another name, the name of any person for whom he wishes to vote, and vote for such person by marking an 'X' in the square before such name." On the back of the stub shall be printed or stamped by the county clerk, or other officer whose duty it is to provide the ballots, the consecutive number of the ballot, beginning with number "1," and increasing in regular numerical order to the total number of ballots required for the precinct.

History: Ap. p. Sec. 17, p. 139, L. 1889; amd. Sec. 1354, Pol. C. 1895; amd. Sec. 1354, p. 117, L. 1901; amd. Sec. 2, Ch. 88, L. 1907; re-en. Sec. 545, Rev. C. 1907; re-en. Sec. 684, R. C. M. 1921. Cal. Pol. C. Sec. 1197.

Collateral References

Elections 168, 176.
29 C.J.S. Elections §§ 159, 171.

23-1115. (685) Uniformity of size and printing. All of the official ballots of the same sort, prepared by any officer or board for the same balloting place, shall be of precisely the same size, arrangement, quality and tint of paper, and kind of type, and shall be printed in black ink of the same tint, so that when the stubs numbered as aforesaid shall be detached therefrom, it shall be impossible to distinguish any one of the ballots from the other ballots of the same sort, and the names of all candidates printed upon the ballots shall be in type of the same size and character.

History: Ap. p. Sec. 17, p. 139, L. 1889; amd. Sec. 1354, Pol. C. 1895; amd. Sec. 1354, p. 117, L. 1901; amd. Sec. 2, Ch. 88, L. 1907; re-en. Sec. 545, Rev. C. 1907; re-en. Sec. 685, R. C. M. 1921. Cal. Pol. C. Sec. 1197.

Collateral References

Elections 166.
29 C.J.S. Elections § 156.
18 Am. Jur. 288, Elections, § 164.

23-1116. (686) County clerk to prepare ballot, when and how. Whenever the secretary of state has duly certified to the county clerk any question to be submitted to the vote of the people, the county clerk must print the ballot in such form as will enable the electors to vote upon the question so presented in the manner provided by law. The county clerk must also

prepare the necessary ballots whenever any question is required by law to be submitted to the electors of any locality, and any of the electors of the state generally, except that as to all questions submitted to the electors of a municipal corporation alone the city clerk must prepare the necessary ballots.

History: Ap. p. Sec. 17, p. 139, L. 1889; amd. Sec. 1354, Pol. C. 1895; amd. Sec. 1354, p. 117, L. 1901; amd. Sec. 2, Ch. 88, L. 1907; re-en. Sec. 545, Rev. C. 1907; re-en. Sec. 686, R. C. M. 1921. Cal. Pol. C. Sec. 1197.

Collateral References
Elections 175.
29 C.J.S. Elections § 170.

23-1117. (687) Number of ballots to be provided for each precinct. The county clerk must provide for each election precinct in the county ten more than an equal number of ballots as there are electors registered in the precinct. If there is no registry in the precinct, the county clerk must provide ballots equal to the number of electors who voted at the last preceding election in the precinct, unless in the judgment of the county clerk a greater number be needed, but in no case to exceed one and one-half times as many as the number of registered voters in the precinct. He must keep a record in his office, showing the exact number of ballots, that are delivered to the judges of each precinct. In municipal elections it is the duty of the city clerk to provide ballots as specified in this section.

History: Ap. p. Sec. 1355, Pol. C. 1895; amd. Sec. 3, Ch. 88, L. 1907; re-en. Sec. 546, Rev. C. 1907; re-en. Sec. 687, R. C. M. 1921; amd. Sec. 1, Ch. 16, L. 1925. Cal. Pol. C. Sec. 1199.

Collateral References
Elections 163.
29 C.J.S. Elections § 155.

CHAPTER 12

CONDUCTING ELECTIONS—THE POLLS—VOTING AND BALLOTS

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| Section | 23-1201. Voting, to commence when and continue how long. |
| | 23-1202. Time of opening and closing of polls. |
| | 23-1203. When polls for special elections shall open and close. |
| | 23-1204. Proclamation at opening and thirty minutes before closing polls. |
| | 23-1205. Proclamation at closing polls. |
| | 23-1206. Sufficient booths or compartments must be furnished. |
| | 23-1207. Elector to cast his ballot without interference. |
| | 23-1208. Expenses of providing places for election. |
| | 23-1209. Delivery of official ballots to elector. |
| | 23-1210. Method of voting. |
| | 23-1211. Only one person to occupy booth, and no longer than five minutes. |
| | 23-1212. Spoiled ballot. |
| | 23-1213. Judges may aid disabled elector. |
| | 23-1214. Manner of voting. |
| | 23-1215. Announcement of voter's name. |
| | 23-1216. Putting ballot in box. |
| | 23-1217. Record that person has voted, how kept. |
| | 23-1218. Marking precinct register book when elector has voted—procedure. |
| | 23-1219. List of voters. |
| | 23-1220. Grounds of challenge. |
| | 23-1221. Proceedings on challenges for want of identity. |
| | 23-1222. Same on challenges for having voted before. |
| | 23-1223. Same on ground of conviction of crime. |
| | 23-1224. Challenges, how determined. |
| | 23-1225. Trial of challenges. |
| | 23-1226. If a person refuses to be sworn, vote to be rejected. |
| | 23-1227. Proceedings upon determination of challenges. |
| | 23-1228. List of challenges to be kept. |

23-1201. (688) Voting, to commence when and continue how long. Voting may commence as soon as the polls are open, and may be continued during all the time the polls remain open.

History: En. Sec. 1365, Pol. C. 1895; re-en. Sec. 556, Rev. C. 1907; re-en. Sec. 688, R. C. M. 1921. Cal. Pol. C. Sec. 1224.

Collateral References

Elections 206-208.
29 C.J.S. Elections § 198.

References

Maddox v. Board of State Canvassers,
116 M 217, 223, 149 P 2d 112.

23-1202. (689) Time of opening and closing of polls. The polls must be opened at eight o'clock on the morning of election day and must be kept open continuously until eight o'clock P.M. of said day, when the same must be closed; provided that in precincts having less than one hundred (100) registered electors the polls must be opened at one o'clock in the afternoon of election day and must be kept open continuously until eight o'clock P.M. of said day, when they must be closed; provided, further, that whenever all registered electors in any precinct have voted the polls shall be immediately closed.

History: Ap. p. Sec. 11, p. 462, Cod. Stat. 1871; re-en. Sec. 11, p. 73, L. 1876; re-en. Sec. 525, 5th Div. Rev. Stat. 1879; re-en. Sec. 1017, 5th Div. Comp. Stat. 1887; amd. Sec. 1290, Pol. C. 1895; re-en. Sec. 514, Rev. C. 1907; re-en. Sec. 689, R. C. M. 1921; amd. Sec. 1, Ch. 3, L. 1935; amd. Sec. 1, Ch. 207, L. 1955. Cal. Pol. C. Sec. 1160.

References

Maddox v. Board of State Canvassers,
116 M 217, 223, 149 P 2d 112.

Collateral References

18 Am. Jur. 321, Elections, § 210.

23-1203. When polls for special elections shall open and close. Whenever any special election is held for the purpose of submitting to the qualified electors of any county, high school district, school district, city or town, the question of incurring an indebtedness for any purpose, issuing bonds or making a special or additional levy for any purpose, the polls shall be open at 12 o'clock noon and shall remain open until 8 o'clock P. M. of the same day; provided, that if any such special election is held on the same day as any general, county, school or municipal election or any primary election and at the same polling places with the same judges and clerks of election, then the polls shall be opened and closed at the same hours as the polls for such general, county, school, municipal or primary election.

History: En. Sec. 1, Ch. 2, L. 1937.

Collateral References

Elections 206, 208.
29 C.J.S. Elections § 198.

23-1204. (690) Proclamation at opening and thirty minutes before closing polls. Before the judges receive any ballots they must cause it to be proclaimed aloud at the place of election that the polls are open, and thirty minutes before the closing of the polls proclamation must be made that the polls will close in one-half hour.

History: Ap. p. Sec. 11, p. 462, Cod. Stat. 1871; re-en. Sec. 11, p. 73, L. 1876; re-en. Sec. 525, 5th Div. Rev. Stat. 1879; re-en. Sec. 1017, 5th Div. Comp. Stat. 1887;

amd. Sec. 1291, Pol. C. 1895; re-en. Sec. 515, Rev. C. 1907; re-en. Sec. 690, R. C. M. 1921. Cal. Pol. C. Sec. 1163.

23-1205. (691) Proclamation at closing polls. When polls are closed, that fact must be proclaimed aloud at the place of election; and after such proclamation no ballots must be received.

History: Ap. p. Sec. 11, p. 462, Cod. amd. Sec. 1292, Pol. C. 1895; re-en. Sec. Stat. 1871; re-en. Sec. 11, p. 73, L. 1876; 516, Rev. C. 1907; re-en. Sec. 691, R. C. M. re-en. Sec. 525, 5th Div. Rev. Stat. 1879; 1921. Cal. Pol. C. Sec. 1164.
re-en. Sec. 1017, 5th Div. Comp. Stat. 1887;

23-1206. (692) Sufficient booths or compartments must be furnished. All officers upon whom is imposed by law the duty of designating the polling-places must provide in each polling-place designated by them, a sufficient number of places, booths, or compartments, each booth or compartment to be furnished with a door or curtain sufficient in character to screen the voter from observation, and must be furnished with such supplies and conveniences as shall enable the elector to prepare his ballot for voting, and in which electors must mark their ballots, screened from observation, and a guard-rail so constructed that only persons within such rail can approach within ten feet of the ballot-boxes, or the places, booths, or compartments herein provided for. The number of such places, booths, or compartments must not be less than one for every fifty electors, or fraction thereof, registered in the precinct. In precincts containing less than twenty-five registered voters, the election may be conducted under the provisions of this chapter without the preparation of such booths or compartments, as required by this section.

History: En. Sec. 22, p. 141, L. 1889; re-en. Sec. 1357, p. 118, L. 1901; re-en. Sec. 548, Rev. C. 1907; re-en. Sec. 692, R. C. M. 1921. Cal. Pol. C. Sec. 1203.

Collateral References
Elections 201.
29 C.J.S. Elections § 195.

23-1207. (693) Elector to cast his ballot without interference. (1) No person other than electors engaged in receiving, preparing, or depositing their ballots, or a person present for the purpose of challenging the vote of an elector about to cast his ballot, is permitted to be within said rail; and in cases of small precincts where places, booths, or compartments are not required, no person engaged in preparing his ballot shall, in any way, be interfered with by any person, unless it be some one authorized by the provisions of this chapter to assist him in preparing his ballot; nor shall any officer of election do any electioneering on election day. No person whatsoever shall do any electioneering on election day, within any polling place, or any building in which an election is being held, or within twenty-five feet thereof; said space of twenty-five feet to be protected by ropes and kept free of trespassers; nor shall any person obstruct the doors or entries thereto, or prevent free ingress to and egress from said building. Any election officer, sheriff, constable, or other peace officer is hereby authorized and empowered, and it is hereby made his duty, to clear the passageway, and prevent such obstruction, and to arrest any person so doing.

(2) No person shall remove any ballot from the polling-place before the closing of the polls. No person shall show his ballot after it is marked, to any person, in such a way as to reveal the contents thereof, or the name of the candidate or candidates for whom he has marked his vote;

nor shall any person solicit the elector to show the same; nor shall any person, except the judge of election, receive from any elector a ballot prepared for voting. No elector shall receive a ballot from any other person than one of the judges of election having charge of the ballots; nor shall any person other than such judge of election deliver a ballot to such elector. No elector shall vote, or offer to vote, any ballot except such as he has received from the judges of election having charge of the ballots. No elector shall place any mark upon his ballot by which it may afterwards be identified as the one voted by him. Every elector who does not vote a ballot delivered to him by the judges of election having charge of the ballots, shall, before leaving the polling-place, return such ballot to such judges.

History: Ap. p. Sec. 22, p. 141, L. 1889; re-en. Sec. 1358, Pol. C. 1895; amd. Sec. 1358, p. 118, L. 1901; re-en. Sec. 549, Rev. C. 1907; re-en. Sec. 693, R. C. M. 1921. Cal. Pol. C. Sec. 1215.

Cross-References

Disclosing contents of ballot after marking, penalty, sec. 94-1414.

Electioneering by election officials, penalty, 94-1413.

23-1208. (694) Expenses of providing places for election. The expense of providing such places or compartments, ropes, and guard-rails is a public charge, and must be provided for in the same manner as the other election expenses.

History: En. Sec. 1359, p. 119, L. 1901; re-en. Sec. 550, Rev. C. 1907; re-en. Sec. 694, R. C. M. 1921.

23-1209. (695) Delivery of official ballots to elector. At any election the judges of election must designate two of their number whose duty it is to deliver ballots to the qualified electors. Before delivering any ballot to an elector, the said judges must print on the back, and near the top of the ballot, with the rubber or other stamp provided for the purpose, the designation "official ballot" and the other words on same, as provided for in section 23-705 of this code; and the clerks must enter on the poll-lists the name of such elector and the number of the stub attached to the ballot given him. Each qualified elector must be entitled to receive from the judges one ballot.

History: Ap. p. Sec. 23, p. 141, L. 1889; amd. Sec. 1360, Pol. C. 1895; amd. Sec. 4, Ch. 88, L. 1907; re-en. Sec. 551, Rev. C. 1907; re-en. Sec. 695, R. C. M. 1921.

Operation and Effect

Where ballots had been delivered to electors by the judges of election with the official stamp apparently in the place in which the law requires it to be, although in reality it was on the stub instead of on the ballot proper, the act of the judges in removing the stamp with the stub—thus leaving the ballot without

References

Cited or applied as section 1358, Political Code, as amended, in *Lane v. Bailey*, 29 M 548, 560, 75 P 191.

Collateral References

Elections—211, 227(5-9), 233, 234.
29 C.J.S. Elections §§ 194, 196, 200, 208, 219, 220.

18 Am. Jur. 322, Elections, §§ 211 et seq.

Collateral References

Elections—201.
29 C.J.S. Elections § 195.

the stamp—did not render the ballot void. *Harrington v. Crichton*, 53 M 388, 164 P 537.

References

Cited or applied as section 1360, Political Code, before amendment, in *State ex rel. Brooks v. Fransham*, 19 M 273, 287, 48 P 1; *State ex rel. Riley v. District Court*, 103 M 576, 588, 64 P 2d 115.

Collateral References

Elections—218.
29 C.J.S. Elections § 204.

23-1210. (696) Method of voting. On receipt of his ballot the elector must forthwith, without leaving the polling-place and within the guard-rail

provided, and alone, retire to one of the places, booths, or compartments, if such are provided, and prepare his ballot. He shall prepare his ballot by marking an "X" in the square before the name of the person or persons for whom he intends to vote. In case of a ballot containing a constitutional amendment, or other question to be submitted to the vote of the people, by marking an "X" in the square before the answer of the question or amendment submitted. The elector may write in the blank spaces or paste over any other name the name of any person for whom he wishes to vote, and vote for such person by marking an "X" before such name. No elector is at liberty to use or bring into the polling-place any unofficial sample ballot. After preparing his ballot the elector must fold it so the face of the ballot will be concealed and so that the indorsements stamped thereon may be seen, and hand the same to the judges in charge of the ballot-box, who shall announce the name of the elector and the printed or stamped number on the stub of the official ballot so delivered to him, in a loud and distinct tone of voice. If such elector be entitled then and there to vote, and if such printed or stamped number is the same as that entered on the poll-list as the number on the stub of the official ballot last delivered to him by the ballot judge, such judge shall receive such ballot, and, after removing the stub therefrom in plain sight of the elector, and without removing any other part of the ballot, or in any way exposing any part of the face thereof below the stub, shall deposit each ballot in the proper ballot-box for the reception of voted ballots, and the stubs in a box for detached ballot stubs. Upon voting, the elector shall forthwith pass outside the guard-rail, unless he be one of the persons authorized to remain within the guard-rail for other purposes than voting.

History: Ap. p. Sec. 24, p. 142, L. 1889; amd. Sec. 1361, Pol. C. 1895; amd. Sec. 1361, p. 119, L. 1901; amd. Sec. 5, Ch. 88, L. 1907; re-en. Sec. 552, Rev. C. 1907; re-en. Sec. 696, R. C. M. 1921. Cal. Pol. C. Sec. 1205.

Acts of Election Officers

A ballot properly marked, but from which the stub has not been detached by the ballot judge as required by this section, should be counted; a voter is not to be disfranchised by the errors or wrongful acts of election officers. *Carwile v. Jones*, 38 M 590, 599, 101 P 153.

Id. A ballot bearing the indorsement: "Voted by H. and M. (judges election) for illegibility of voter," was not void on the ground that the reason given for assisting the voter was not one recognized by law, since section 23-1213, post, does not require the judges to certify the reason for assisting an elector, and the words "for illegibility of voter" were therefore surplusage; and in the absence of a showing why they gave assistance, it will be presumed that they regularly performed their official duties.

Directory, Not Mandatory—Check Mark Counted

Held, that the provision of this section

that a ballot should be marked by an "X" in the square is directory and not mandatory, and that in the absence of a further provision that unless so marked the ballot shall not be counted, a ballot upon which the elector marked all squares with a check mark (✓) instead of an "X," should have been counted for contestant, there being nothing to indicate an attempt to mark the ballot for identification purposes. *Peterson v. Billings*, 109 M 390, 395, 96 P 2d 922.

Operation and Effect

In an election contest, the court properly refused to count for a candidate ballots marked as follows: (1) Where the cross was placed after the candidate's name and entirely without his party column; (2) where perpendicular lines were drawn through the names in one party column, but no cross was placed before the candidate's name; and (3) where his name was written in one party column, but no cross marked in the square before the name. In neither instance was there substantial, or any, compliance with the provisions of this section. *Carwile v. Jones*, 38 M 590, 595, 101 P 153.

Id. In an election contest, the court properly refused to count a ballot for a candidate which was marked by crossing

out all the names in other party columns, but which failed to show an "X" before his name. While the intention of the voter is generally a very material consideration, he must express his intention substantially as indicated by the statute.

Id. Where the cross-mark was placed after the candidate's name but within his party column, the ballot was void, since the elector did not substantially comply with the requirement of this section relative to placing the mark before the name.

Id. Any mark within the square before the candidate's name, which can be said to be a crossing of two lines, will answer the requirements of the statute that the elector must place an "X" in such square; and in the absence of anything to indicate a purpose on his part to identify his ballot by the use of a third line within the square, a defect in the mark is not sufficient to vitiate the ballot.

Voting is an Affirmative Act, Vote for Deceased Candidate Not Counted as Opposed To Write-in

The casting of a ballot at an election of public officers is an affirmative, not a negative act—an act done with intention of

voting for someone; hence if it is the purpose of voters to defeat a certain candidate, that purpose can be accomplished only by voting for some person in opposition to him, and not by voting for a person who died some weeks before election with the expectation that the vote cast for him would be counted as opposed to the person sought to be defeated; one who has died is no longer a person for whom, under art. IX, sec. 2, Const., a voter may cast his ballot. *State ex rel. Wolff v. Guerkink*, 111 M 417, 426, 109 P 2d 1094.

References

Cited or applied as section 1361, Political Code, before amendment, in *State ex rel. Brooks v. Fransham*, 19 M 273, 292, 48 P 1; as section 552, Revised Codes, in *Harrington v. Crichton*, 53 M 388, 164 P 537; *State ex rel. Riley v. District Court*, 103 M 576, 588, 64 P 2d 115; *Madrox v. Board of State Canvassers*, 116 M 217, 223, 149 P 2d 112.

Collateral References

Elections ⇨ 219, 221.
29 C.J.S. *Elections* §§ 206, 207.
18 Am. Jur. 322, *Elections*, §§ 211 et seq.

23-1211. (697) Only one person to occupy booth, and no longer than five minutes. No more than one person must be allowed to occupy any one booth at one time, and no person must remain in or occupy a booth longer than may be necessary to prepare his ballot, and in no event longer than five minutes, if the other booths or compartments are occupied.

History: En. Sec. 25, p. 142, L. 1889; re-en. Sec. 1362, Pol. C. 1895; re-en. Sec. 553, Rev. C. 1907; re-en. Sec. 697, R. C. M. 1921. Cal. Pol. C. Sec. 1206.

Collateral References

Elections ⇨ 201, 227(2).
29 C.J.S. *Elections* § 195.

23-1212. (698) Spoiled ballot. Any elector who by accident or mistake spoils his ballot, may, on returning said spoiled ballot, receive another in place thereof.

History: En. Sec. 26, p. 142, L. 1889; re-en. Sec. 1363, Pol. C. 1895; re-en. Sec. 554, Rev. C. 1907; re-en. Sec. 698, R. C. M. 1921. Cal. Pol. C. Sec. 1207.

Collateral References

Elections ⇨ 218.
29 C.J.S. *Elections* § 204.

23-1213. (699) Judges may aid disabled elector. Any elector who declares to the judges of election, or when it appears to the judges of election that he cannot read or write, or that because of blindness or other physical disability he is unable to mark his ballot, but for no other cause, must, upon request, receive the assistance of two of the judges, who shall represent different parties, in the marking thereof, and such judges must certify on the outside thereof that it was so marked with their assistance, and must thereafter give no information regarding the same. The judges must require such declaration of disability to be made by the elector under oath before them, and they are hereby authorized to administer the same. No elector other than the one who may, because of his inability to read or write, or of his blindness or physical disability, be unable to mark his bal-

lot, must divulge to any one within the polling-place the name of any candidate for whom he intends to vote, or ask or receive the assistance of any person within the polling-place in the preparation of his ballot.

History: Ap. p. Sec. 27, p. 142, L. 1889; amd. Sec. 1364, Pol. C. 1895; amd. Sec. 1364, p. 120, L. 1901; re-en. Sec. 555, Rev. C. 1907; re-en. Sec. 699, R. C. M. 1921. Cal. Pol. C. Sec. 1208.

Operation and Effect

Where it appeared in an election contest that a voter's ballot had been indorsed by the judges of election, as required by this section, it was necessary to show that it could not thereby be identified, in order to let in, as secondary evidence, testimony as to how he

voted. Lane v. Bailey, 29 M 548, 560, 75 P 191.

References

Cited or applied as section 555, Revised Codes, in Carwile v. Jones, 38 M 590, 597, 101 P 153; Gervais v. Rolfe, 57 M 209, 212, 187 P 899.

Collateral References

Elections ⇨ 220.
29 C.J.S. Elections § 208.
18 Am. Jur. 328, Elections, §§ 218 et seq.

23-1214. (700) Manner of voting. No person whomsoever, except a judge or judges of election, shall put into the ballot box any ballot, or any paper resembling a ballot, or any other thing whatsoever. Any person or persons violating the foregoing provision shall be guilty of a misdemeanor. Any judge or judges of election who shall knowingly permit a violation of any of the provisions in this section set forth shall be guilty of a felony and be punishable as in this section hereinbefore specified. The person offering to vote must hand his ballot to the judge, and announce his name, and in incorporated cities and towns any such person must also give the name of the street, avenue, or location of his residence, and the number thereof, if it be numbered, or such clear and definite description of the place of such residence as shall definitely fix the same.

History: En. Sec. 1366, Pol. C. 1895; re-en. Sec. 557, Rev. C. 1907; re-en. Sec. 700, R. C. M. 1921; amd. Sec. 1, Ch. 111, L. 1937. Cal. Pol. C. Sec. 1225.

Collateral References

Elections ⇨ 221, 314.
29 C.J.S. Elections §§ 207, 327.

References

Goodell v. Judith Basin County et al., 70 M 222, 233, 224 P 1110.

23-1215. (701) Announcement of voter's name. The judges must receive the ballot, and before depositing it in the ballot-box must, in an audible tone of voice, announce the name, and in incorporated towns and cities the judges must also announce the residence of the person voting, and the same must be recorded on each poll-book.

History: En. Sec. 1367, Pol. C. 1895; re-en. Sec. 558, Rev. C. 1907; re-en. Sec. 701, R. C. M. 1921. Cal. Pol. C. Sec. 1226.

References

Goodell v. Judith Basin County et al., 70 M 223, 233, 224 P 1110.

23-1216. (702) Putting ballot in box. If the name be found on the official register in use at the precinct where the vote is offered, or if the person offering to vote produce and surrender a proper registry certificate, and the vote is not rejected, upon a challenge taken, the judges must immediately and publicly, in the presence of all the judges, place the ballot, without opening or examining the same, in the ballot-box.

History: En. Sec. 1368, Pol. C. 1895; re-en. Sec. 559, Rev. C. 1907; re-en. Sec. 702, R. C. M. 1921. Cal. Pol. C. Sec. 1227.

References

Goodell v. Judith Basin County et al., 70 M 222, 233, 224 P 1110.

23-1217. (703) Record that person has voted, how kept. When the ballot has been placed in the box, one of the judges must write the word "Voted" opposite the number of the person on the check-list for the precinct.

History: En. Sec. 1369, Pol. C. 1895; re-en. Sec. 560, Rev. C. 1907; re-en. Sec. 703, R. C. M. 1921. Cal. Pol. C. Sec. 1223.

References

Maddox v. Board of State Canvassers, 116 M 217, 223, 149 P 2d 112.

Operation and Effect

Under this section the act of voting is not completed until the ballot is deposited in the ballot-box. Goodell v. Judith Basin County et al., 70 M 222, 233, 224 P 1110.

Collateral References

Elections 216.
29 C.J.S. Elections § 205.

23-1218. (704) Marking precinct register book when elector has voted—procedure. The judges of election in each precinct, at every general or special election, shall, in the precinct register book, which shall be certified to them by the county clerk, mark a cross (X) upon the line opposite to the name of the elector. Before any elector is permitted to vote the judges of election shall require the elector to sign his name upon one of the precinct register books, designated by the county clerk for that purpose, and in a column reserved in the said precinct books for the signature of electors. If the elector is not able to sign his name, he shall be required by the judges to produce two freeholders who shall make an affidavit before the judges of election, or one of them, in substantially the following form:

The State of Montana, }
County of..... } ss.

"We, the undersigned witnesses, do swear that our names and signatures are genuine, and that we are each personally acquainted with (the name of the elector), and that we know that he is residing at, and that we believe that he is entitled to vote at this election, and that we are each freeholders in the county," which affidavit shall be filed by the judges, and returned by them to the county clerk, with the return of the election; one of the judges shall thereupon write the elector's name, and note the fact of his inability to sign, and the names of the two freeholders who made the affidavit herein provided for. If the elector fails or refuses to sign his name, and, if unable to write, fails to procure two freeholders who will take the oath herein provided, he shall not be allowed to vote. Immediately after the election and canvass of the returns, the judges of election shall deliver to the county clerk the copy of said official precinct register, sealed, with the election returns and poll-book, which have been used at said election.

History: En. Sec. 26, Ch. 113, L. 1911; amd. Sec. 26, Ch. 74, L. 1913; amd. Sec. 26, Ch. 122, L. 1915; re-en. Sec. 704, R. C. M. 1921.

References

Thompson v. Chapin, 64 M 376, 383, 209 P 1060.

NOTE.—The foregoing section appears as section 23-524. It is also printed here because of its application to the subject embraced in this chapter.

Collateral References

Elections 212.
29 C.J.S. Elections § 197.

23-1219. (705) List of voters. Each clerk must keep a list of persons voting, and the name of each person who votes must be entered thereon and

numbered in the order voting. Such list is known as the poll-list and forms a part of the poll-book of the precinct.

History: En. Sec. 1370, Pol. C. 1895; re-en. Sec. 561, Rev. C. 1907; re-en. Sec. 705, R. C. M. 1921. Cal. Pol. C. Sec. 1229.	Collateral References Elections 212. 29 C.J.S. Elections § 197.
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23-1220. (706) Grounds of challenge. Any person offering to vote may be orally challenged by any elector of the county, upon either or all of the following grounds:

1. That he is not the person whose name appears on the register or check-list.

2. That he is an idiot or insane person.

3. That he has voted before that day.

4. That he has been convicted of a felony and not pardoned.

History: En. Sec. 1371, Pol. C. 1895; re-en. Sec. 562, Rev. C. 1907; re-en. Sec. 706, R. C. M. 1921. Cal. Pol. C. Sec. 1230.	Collateral References Elections 223. 29 C.J.S. Elections § 209. 18 Am. Jur. 327, Elections, § 217.
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23-1221. (707) Proceedings on challenges for want of identity. If the challenge is on the ground that he is not the person whose name appears on the official register, the judges must tender him the following oath:

“You do swear (or affirm) that you are the person whose name is entered on the official register and check-list.”

History: En. Sec. 1372, Pol. C. 1895;
re-en. Sec. 563, Rev. C. 1907; re-en. Sec.
707, R. C. M. 1921. Cal. Pol. C. Sec. 1231.

23-1222. (708) Same on challenges for having voted before. If the challenge is on the ground that the person challenged has voted before that day, the judges must tender to the person challenged this oath:

“You do swear (or affirm) that you have not before voted this day.”

History: En. Sec. 1373, Pol. C. 1895;
re-en. Sec. 564, Rev. C. 1907; re-en. Sec.
708, R. C. M. 1921. Cal. Pol. C. Sec. 1234.

23-1223. (709) Same on ground of conviction of crime. If the challenge is on the ground that the person challenged has been convicted of a felony, the judges must tender him the following oath:

“You do swear (or affirm) that you have not been convicted of a felony.”

History: En. Sec. 1374, Pol. C. 1895;
re-en. Sec. 565, Rev. C. 1907; re-en. Sec.
709, R. C. M. 1921. Cal. Pol. C. Sec. 1235.

23-1224. (710) Challenges, how determined. Challenges upon the grounds either:

1. That the person challenged is not the person whose name appears on the official register; or

That the person has before voted that day, are determined in favor of the person challenged by his taking the oath tendered.

2. A challenge upon the ground that the person challenged has been convicted of a felony and not pardoned must be determined in favor of the person challenged on his taking the oath tendered, unless the fact of

conviction be proved by the production of an authenticated copy of the record or by the oral testimony of two witnesses. If the person challenged asserts that he has been convicted of a felony and pardoned therefor, he must exhibit his pardon or a proper certified copy thereof to the judges, and if the pardon be found sufficient, the judges must tender to him the following oath: "You do swear that you have not been convicted of any felony other than that for which a pardon is now exhibited." Upon taking this oath the person challenged must be permitted to vote if otherwise qualified, unless a conviction of some other felony be proved, as in this section provided for the proof of a conviction.

History: En. Sec. 1375, Pol. C. 1895;
re-en. Sec. 566, Rev. C. 1907; re-en. Sec.
710, R. C. M. 1921. Cal. Pol. C. Sec. 1236.

23-1225. (711) Trial of challenges. Challenges for causes other than those specified in the preceding section must be tried and determined by the judges of election at the time of the challenge.

History: En. Sec. 1376, Pol. C. 1895;
re-en. Sec. 567, Rev. C. 1907; re-en. Sec.
711, R. C. M. 1921. Cal. Pol. C. Sec. 1237.

23-1226. (712) If a person refuses to be sworn, vote to be rejected. If any person challenged refuses to take the oaths tendered, or refuses to be sworn and to answer the questions touching the matter of residence, he must not be allowed to vote.

History: En. Sec. 1377, Pol. C. 1895;
re-en. Sec. 568, Rev. C. 1907; re-en. Sec.
712, R. C. M. 1921. Cal. Pol. C. Sec. 1238.

Collateral References

Elections ⇨ 224.
29 C.J.S. Elections § 211.

23-1227. (713) Proceedings upon determination of challenges. If the challenge is determined against the person offering to vote, the ballot must, without examination, be destroyed by the judges in the presence of the person offering the same; if determined in his favor, the ballot must be deposited in the ballot-box.

History: En. Sec. 1378, Pol. C. 1895;
re-en. Sec. 569, Rev. C. 1907; re-en. Sec.
713, R. C. M. 1921. Cal. Pol. C. Sec. 1242.

Collateral References

Elections ⇨ 224.
29 C.J.S. Elections § 211.

23-1228. (714) List of challenges to be kept. The judges must cause each of the clerks to keep a list showing:

1. The names of all persons challenged.
2. The grounds of such challenges.
3. The determination of the judges upon the challenge.

History: En. Sec. 1379, Pol. C. 1895;
re-en. Sec. 570, Rev. C. 1907; re-en. Sec.
714, R. C. M. 1921. Cal. Pol. C. Sec. 1243.

CHAPTER 13

VOTING BY ABSENT ELECTORS

Section 23-1301. Voting by elector when absent from place of residence or physically incapacitated from going to polls.

23-1302. Application of absentee or physically incapacitated person for ballot.

23-1303. Form of application.

- 23-1304. Transmission of application to county clerk—delivery of ballot.
- 23-1305. Duty of clerk to deliver application or ballot.
- 23-1306. Mailing ballot to elector—form of return and affidavit.
- 23-1307. Marking and swearing to ballot by elector.
- 23-1308. Disposition of marked ballot upon receipt by clerk.
- 23-1309. Delivery or mailing of ballots to election judges.
- 23-1310. Clerk to keep record of ballots and issue certificate.
- 23-1311. Duty of election judges—poll-lists, numbering ballots and rejected ballots.
- 23-1312. Voting before election day by prospective absentee or physically incapacitated elector.
- 23-1313. Envelopes containing ballots—deposit in box and rejection of ballot.
- 23-1314. Transmission of ballot by special delivery.
- 23-1315. Voting in person by elector on election day.
- 23-1316. Procedure when elector is present after marking absent or physically incapacitated voter ballot.
- 23-1317. Opening of envelopes after deposit.
- 23-1318. False swearing perjury—official misconduct a misdemeanor.
- 23-1319. Voting machines—canvass of votes.
- 23-1320. Duty of elector if present on election day.
- 23-1321. Violation of law by elector or officer outside of state—change of venue.

23-1301. (715) Voting by elector when absent from place of residence or physically incapacitated from going to polls. Any qualified elector of this state, having complied with the laws in regard to registration, who is absent from the county or who is physically incapacitated from attending the precinct poll of which he is an elector on the day of holding any general or special election, or primary election for the nomination of candidates for such general election, or any municipal, general, special or primary election, may vote at any such election as hereinafter provided.

History: En. Sec. 1, Ch. 110, L. 1915; amd. Sec. 1, Ch. 155, L. 1917; re-en. Sec. 715, R. C. M. 1921; amd. Sec. 1, Ch. 234, L. 1943.

Constitutionality

The absent voters law is a valid enactment and not open to the objection that in permitting a ballot to be delivered to the election officers by mail, it violates section 2, of article IX of the state Constitution, the contention that the section, by providing that an elector shall have resided in the state one year immediately preceding the election "at which he offers to vote," impliedly requires his personal presence at the polls, not being tenable. *Goodell v. Judith Basin County et al*, 70 M 222, 227 et seq., 224 P 1110.

Improper Delivery Voids Ballots

Absent voters' ballot delivered by county clerk not to electors personally or by mail, but to one engaged in procuring electors

to apply therefor and request that such ballots be delivered to such person, were void and could not be voted at ensuing election. *State ex rel. Van Horn v. Lyon*, 119 M 212, 173 P 2d 891, 895.

References

Maddox v. Board of State Canvassers, 116 M 217, 223, 149 P 2d 112 (wherein reference is made to the absent voters law as a whole, secs. 23-1301 through 23-1321).

Collateral References

Elections—216.1.

29 C.J.S. *Elections* § 210.

18 Am. Jur. 325, *Elections*, § 214.

Absentee Voters Law. 14 ALR 1256.

Right to vote of person inducted into military service under draft act, 129 ALR 1189.

Voting by persons in the military service. 149 ALR 1466.

23-1302. (716) Application of absentee or physically incapacitated person for ballot. At any time within forty-five (45) days next preceding such election, any voter expecting to be absent on the day of election from the county in which his voting precinct is situated, or serving in the armed services of the United States or in the merchant marines of the

United States, or who is a civilian outside the United States officially attached to and serving with the armed forces of the United States, or who as a result of physical incapacity, in all probability will be unable to attend his voting precinct poll as made to appear by the certificate of a physician licensed under the laws of Montana, plainly stating the nature of the physical incapacity of the applicant, and certifying (a) that such incapacity will continue beyond the day of the election for which the application is made; (b) to the extent of reasonably preventing applicant from going to the polls, bodily health considered, may make application to the county clerk of such county, or to the city or town clerk, in the case of a municipal, general, or primary election, for an official ballot or official ballots to be voted at such election as an absent or physically incapacitated voter's ballot or ballots.

History: En. Sec. 2, Ch. 110, L. 1915; re-en. Sec. 2, Ch. 155, L. 1917; re-en. Sec. 716, R. C. M. 1921; amd. Sec. 2, Ch. 234, L. 1943; amd. Sec. 1, Ch. 104, L. 1953.

Van Horn v. Lyon, 119 M 212, 173 P 2d 891, 892.

Collateral References
Elections \Rightarrow 216.1.
29 C.J.S. Elections § 210.

References

Goodell v. Judith Basin County et al., 70 M 222, 227, 224 P 1110; State ex rel.

23-1303. (717) Form of application. Application for such ballots shall be made on a blank furnished by the county clerk of the county of which the applicant is an elector, or the city or town clerk, if it be municipal, general, special or primary election, and shall be in substantially the following form:

"I, _____, a duly qualified elector of the _____ precinct, in the county of _____, and State of Montana, and am to the best of my knowledge and belief entitled to vote in such precinct in the next election, expecting to be absent from said county or, in all probability, to be physically incapacitated from going to my precinct poll on the day for holding such election, hereby make application for an official ballot to be voted by me at the said election.

Post office address to which ballot is to be mailed _____

State of _____ }
County of _____ } ss.

On this _____ day of _____, personally appeared before me _____, who being first duly sworn, deposes and says that he is the person who signed the foregoing application, that he has read and knows contents of same and knows to his own knowledge the matters and things therein stated are true.

_____ "

This application must be subscribed by the applicant and sworn to before some officer authorized to administer oaths, and the application shall not be deemed complete without this affidavit.

Provided that application for such ballot by any voter in the armed services of the United States or in the merchant marines of the United States, or who is a civilian outside the United States officially attached to and serving with the armed forces of the United States may be made by a written request, signed by said applicant, addressed to the county clerk of the county of residence of said voter.

History: En. Sec. 3, Ch. 110, L. 1915; re-en. Sec. 3, Ch. 155, L. 1917; re-en. Sec. 717, R. C. M. 1921; amd. Sec. 1, Ch. 151, L. 1923; amd. Sec. 1, Ch. 32, L. 1941; amd. Sec. 3, Ch. 234, L. 1943; amd. Sec. 2, Ch. 104, L. 1953; amd. Sec. 1, Ch. 152, L. 1955.

References

Goodell v. Judith Basin County et al., 70 M 222, 227, 224 P 1110; State ex rel. Van Horn v. Lyon, 119 M 212, 173 P 2d 891, 892.

23-1304. (718) Transmission of application to county clerk—delivery of ballot. The voter making such application shall forward by mail or deliver in person the same to the county clerk of the county in which he is registered and it shall be the duty of the said county clerk to look up the applicant's registration card and compare the signature on the application for absent or physically incapacitated voter's ballot and the registration card and if convinced the person making the application for absent or physically incapacitated voter's ballot and the person who signed the original registration card is one and the same person, he shall accept the same in good faith and deliver the ballot as provided in section 23-1305.

History: En. Sec. 4, Ch. 110, L. 1915; amd. Sec. 4, Ch. 155, L. 1917; re-en. Sec. 718, R. C. M. 1921; amd. Sec. 2, Ch. 151, L. 1923; amd. Sec. 4, Ch. 234, L. 1943.

References

Goodell v. Judith Basin County et al., 70 M 222, 227, 236, 224 P 1110; State ex rel. Van Horn v. Lyon, 119 M 212, 173 P 2d 891, 892.

23-1305. (719) Duty of clerk to deliver application or ballot. Such application blank shall, upon request therefor, be sent by such county or city or town clerk to any elector of the county, by mail, and shall be delivered to any elector upon application made personally at the office of such county or city or town clerk; provided, however, that no elector shall be entitled to receive such a ballot on election day, nor unless his application is made to or received by the county or city or town clerk before the delivery of the official ballots to the judge of election.

History: En. Sec. 5, Ch. 110, L. 1915; re-en. Sec. 5, Ch. 155, L. 1917; re-en. Sec. 719, R. C. M. 1921.

References

Goodell v. Judith Basin County et al., 70 M 222, 227, 224 P 1110.

23-1306. (720) Mailing ballot to elector—form of return and affidavit. Upon receipt of such application, properly filled out and duly signed, or as soon thereafter as the official ballot for the precinct in which the applicant resides has been printed, the said county or city or town clerk shall send to such elector by mail, postage prepaid, one official ballot, or if there be more than one ballot to be voted by an elector of such precinct, one of each kind, and shall inclose with such ballot or ballots an envelope, to be furnished by such county or city or town clerk, which envelope shall bear upon the front thereof the name, official title and postoffice address of such county or city or town clerk, and upon the other side a printed affidavit, in substantially the following form:

State of
 County of } ss.

I,, do solemnly swear that I am a resident of the precinct, (and if he be a resident of a city or town, add: "Residing at, in the town or city of,") county of and state of Montana, and entitled to vote in such precinct at the next election; that I expect to be absent from the said county of my residence or, in all probability, to be physically incapacitated from going to my precinct poll on the day of holding such election and that I will have no opportunity to vote in person on that day.

Subscribed and sworn to before me this day of 19.....; and I hereby certify that the affiant exhibited to me the enclosed ballot or ballots for inspection before marking, and that the same was (or were) then unmarked and that he then in my presence, and in the presence of no other person, and in such manner that I could not see his vote, marked said ballot (or ballots) and inclosed and sealed the same in this envelope. That the affiant was not solicited or advised by me to vote for or against any candidate or measure.

History: En. Sec. 6, Ch. 110, L. 1915; amd. Sec. 6, Ch. 155, L. 1917; re-en. Sec. 720, R. C. M. 1921; amd. Sec. 5, Ch. 234, L. 1943.

References

Goodell v. Judith Basin County et al., 70 M 222, 237, 224 P 1110.

23-1307. (721) Marking and swearing to ballot by elector. Such voter shall make and subscribe the said affidavit before an officer authorized by law to administer oaths, and who has an official seal, and may do so at any place in the state of Montana, or in any other state or territory of the United States, before any officer authorized by the laws of this state to take acknowledgments of instruments without the state, and such voter shall thereupon, in the presence of such officer and of no other person, mark such ballot or ballots, but in such manner that such officer cannot see the vote, and such ballot or ballots thereupon, in the presence of such officer, shall be folded by such voter so that each ballot shall be separate, and so as to conceal the vote, and shall be, in the presence of such officer, placed in such envelope securely sealed. Said officer shall thereupon append his signature and official title and affix his seal at the end of said jurat and affidavit. Said envelope shall be mailed by such absent or physically incapacitated voter, postage prepaid, or delivered to the county or city or town clerk, as the case may be.

History: En. Sec. 7, Ch. 110, L. 1915; amd. Sec. 7, Ch. 155, L. 1917; re-en. Sec. 721, R. C. M. 1921; amd. Sec. 3, Ch. 151, L. 1923; amd. Sec. 6, Ch. 234, L. 1943; amd. Sec. 1, Ch. 60, L. 1953.

References

Goodell v. Judith Basin County et al., 70 M 222, 237, 224 P 1110.

Collateral References

Elections 216.1.
 29 C.J.S. Elections § 210.

23-1308. (722) Disposition of marked ballot upon receipt by clerk. Upon receipt of such envelope, such county or city or town clerk shall

forthwith inclose the same, unopened, together with the written application of such absent voter or physically incapacitated voter in a larger envelope, which shall be securely sealed and indorsed with the name of the proper voting precinct, the name and official title of such clerk, and the words "This envelope contains an absent or physically incapacitated voter ballot, and must be opened only on election day at the polls when the same are open," and such clerk shall safely keep the same in his office until the same is delivered or mailed by him as provided in the next section.

History: En. Sec. 8, Ch. 110, L. 1915;
re-en. Sec. 8, Ch. 155, L. 1917; re-en. Sec.
722, R. C. M. 1921; amd. Sec. 7, Ch. 234,
L. 1943.

References

Goodell v. Judith Basin County et al.,
70 M 222, 227, 224 P 1110.

23-1309. (723) Delivery or mailing of ballots to election judges. In case such envelope is received by such clerk prior to the delivery of the official ballots to a judge of election of the precinct in which such absent or physically incapacitated voter resides, said larger envelope, containing the said voter's envelope, and his said application as above provided, shall be delivered to the judge of election of such precinct, to whom the official ballots of the precinct shall be delivered, and at the same time. In case the official ballots for such precinct shall have been delivered to the judge of election prior to the time of the receipt by the said clerk of said absent or physically incapacitated voter's envelope, such clerk shall immediately after inclosing such voter's envelope and his application in a larger envelope, and after endorsing the latter as provided in the foregoing section, address and mail the larger envelope, postage prepaid, to the said judge of election of said precinct, as hereinafter further provided.

History: En. Sec. 9, Ch. 110, L. 1915;
re-en. Sec. 9, Ch. 155, L. 1917; re-en. Sec.
723, R. C. M. 1921; amd. Sec. 8, Ch. 234,
L. 1943.

References

Goodell v. Judith Basin County et al.,
70 M 222, 227, 224 P 1110.

23-1310. (724) Clerk to keep record of ballots and issue certificate. The ballot or ballots to be delivered or marked by such absent or physically incapacitated voter shall be one of the regular official ballots to be used at such election, and of each kind of such official ballots if there be more than one kind to be voted, beginning with ballot one and following consecutively, according to the number of applications for such absent or physically incapacitated voter ballots. The county or city or town clerk shall keep a record of all ballots so delivered for the purpose of absent voting, or voting by persons physically incapacitated from going to the polls, as well as of ballots, if any, marked before him as hereinafter provided, and shall make and deliver to the judge of election, to whom the ballots for the precinct are delivered, and at the time of the delivery of such ballots, a certificate stating the number of ballots delivered or mailed to absent or physically incapacitated voters, as well as those marked before him, if any, and the names of the voters to whom such ballots shall be delivered or mailed, or by whom they shall have been marked if marked before him.

History: En. Sec. 10, Ch. 110, L. 1915;
re-en. Sec. 10, Ch. 155, L. 1917; re-en. Sec.
724, R. C. M. 1921; amd. Sec. 9, Ch. 234,
L. 1943.

References

Goodell v. Judith Basin County et al.,
70 M 222, 227, 224 P 1110.

23-1311. (725) Duty of election judges—poll-lists, numbering ballots and rejected ballots. The judges of election, at the opening of the polls, shall note on the poll-lists, when one is required by law to be kept, opposite the numbers corresponding to the numbers of the ballots issued to absent or physically incapacitated voters, as shown by the certificate of the county or city or town clerk, the fact that such ballots were issued to absent or physically incapacitated voters, and shall reserve said numbers for the absent or physically incapacitated voters. The notation may be made by writing the words “absent or physically incapacitated voters” opposite such numbers.

The judges shall not allow any names to be inserted in the poll-list on the lines corresponding to said numbers, except the name of the elector entitled to each particular number according to the certificate of the county or city or town clerk, and the number of his ballot. Any so rejected shall be placed together with the voter’s application and the absent or physically incapacitated voter’s envelope provided for the purpose by the clerk and recorder or city or town clerk, which shall be sealed and endorsed by the words, “rejected absent or physically incapacitated voter ballots” numbered, and shall put thereon the number of the ballots given to absent or physically incapacitated voters according to the county or city or town clerk’s certificate. There shall be a separate enclosing envelope for the ballot or ballots of each absent or physically incapacitated voter whose ballot or ballots may have been rejected, and such envelopes shall be placed in an envelope together with the other ballots, and shall not be opened without order of a court of competent jurisdiction.

History: En. Sec. 11, Ch. 110, L. 1915; amd. Sec. 11, Ch. 155, L. 1917; re-en. Sec. 725, R. C. M. 1921; amd. Sec. 10, Ch. 234, L. 1943.

Collateral References

Elections—216.1.
29 C.J.S. Elections § 210.

References

Goodell v. Judith Basin County et al.,
70 M 222, 227, 224 P 1110.

23-1312. (726) Voting before election day by prospective absentee or physically incapacitated elector. Any qualified elector who is present in his county after the official ballots of such county have been printed and who has reason to believe that he will be absent from such county on election day, or physically incapacitated as provided in section 23-1302 may vote before he leaves his county or prior to the inception of such physical incapacity, in like manner as an absent or physically incapacitated voter, before the county or city or town clerk or some officer authorized to administer oaths and having an official seal; and the provisions of this act shall be deemed to apply to such voting. If the ballot be marked before the county or city or town clerk it shall be his duty to deal with it in the same manner as if it had come by mail.

History: En. Sec. 12, Ch. 110, L. 1915; amd. Sec. 12, Ch. 155, L. 1917; re-en. Sec. 726, R. C. M. 1921; amd. Sec. 11, Ch. 234, L. 1943.

References

Goodell v. Judith Basin County et al.,
70 M 222, 227, 224 P 1110.

23-1313. (727) Envelopes containing ballots—deposit in box and rejection of ballot. At any time between the opening and closing of the polls

on such election day, the judges of election of such precinct shall first open the outer envelope only, and compare the signature of such voter to such application, with the signature to such affidavit.

In case the judge finds the affidavit is sufficient and that the signatures correspond, and that the applicant is then a duly qualified elector of such precinct, and has not voted at such election, they shall open the absent or physically incapacitated voter's envelope, in such manner as not to destroy the affidavit thereon, and take out the ballot or ballots therein contained, and without unfolding the same, or permitting the same to be opened or examined, shall ascertain whether the stub or stubs is or are still attached to the ballot or ballots, and whether the number thereon corresponds to the number in the county or city or town clerk's certificate. If so, they shall endorse the same in like manner that other ballots are endorsed, shall detach the stub as in other cases, and deposit the ballot or ballots in the proper ballot-box or boxes, and make in their election list and books the proper entries to show such elector to have voted. In case such affidavit is found to be insufficient, or that the said signatures do not correspond, or that such applicant is not then a duly qualified elector of such precinct, such vote shall not be allowed, but, without opening the absent or physically incapacitated voter envelope, the judges of such election shall mark across the face thereof "rejected as defective" or "rejected as not an elector" as the case may be. The absent or physically incapacitated voter envelope, when such absent vote or vote by a person physically incapacitated from going to the polls is voted, and the absent or physically incapacitated voter envelope with its contents, unopened, when such absent vote or vote by a person physically incapacitated from going to the polls is rejected, shall be deposited in the ballot-box containing the general or party ballots, as the case may be, retained and preserved in the manner by law provided for the retention and preservation of official ballots voted at such election. If, upon opening the absent or physically incapacitated voter's envelope, it be found that the stub of any ballot has been detached, or that the number thereon does not correspond to the number in the county or city or town clerk's certificate of the number issued to such absent or physically incapacitated voter, the ballot shall be rejected, and it shall then and there, and without looking at the face thereof, be marked on the back "rejected on the ground of.....," filling the blank with the statement of the reason of the rejection; which statement shall be dated and signed by the majority of the judges. The ballot or ballots so rejected, together with the absent or physically incapacitated voter's envelope bearing the application, and the said application, shall be all enclosed in an envelope, which shall be then and there securely sealed, and on such envelope the judges shall write or cause to be written (if not already printed thereon) the words, "rejected ballot of absent or physically incapacitated voter" (writing in the name of the elector). "The rejected ballot or ballots is or are....." The judges shall designate the rejected ballot as "general ballot," if it be a ballot for candidates that be rejected. If the rejected ballot be a one put on a question submitted to the vote of the electors, the judges shall designate such ballot as ballot question No.....in the certificate on the envelope. There shall be a separate enclosing envelope for

the ballot or ballots of each absent or physically incapacitated voter whose ballot or ballots may have been rejected and such enclosing envelope shall be placed in the envelope in which the other ballots voted or (are) required to be placed and shall not be opened without an order of a court of competent jurisdiction. The county or city or town clerk shall provide and have delivered to the judge of election suitable envelopes for enclosing rejected absent or physically incapacitated voter's ballots.

History: En. Sec. 13, Ch. 110, L. 1915; amd. Sec. 13, Ch. 155, L. 1917; re-en. Sec. 727, R. C. M. 1921; amd. Sec. 12, Ch. 234, L. 1943.

Operation and Effect

Voting is accomplished not merely by marking the ballot, but by having it delivered to the election officials and deposited in the ballot box before the closing of the polls on election day, and this is equally true under the absent voter's

law, (secs. 23-1301 through 23-1321) by virtue of section 23-1313. *Maddox v. Board of State Canvassers*, 116 M 217, 223, 149 P 2d 112.

References

Goodell v. Judith Basin County et al., 70 M 222, 227, 224 P 1110.

Collateral References

Elections \Rightarrow 216.1.
29 C.J.S. Elections § 210.

23-1314. (728) Transmission of ballot by special delivery. Whenever the county or city or town clerk shall mail the envelope containing an absent or physically incapacitated voter's envelope and ballots, as provided in this act, to a judge of election, he shall place thereon the proper postage and the proper stamp or stamps, and the proper markings to secure the transmission and delivery thereof as a special delivery letter, in accordance with the postal laws of the United States and the regulations of the United States post office.

History: En. Sec. 14, Ch. 110, L. 1915; amd. Sec. 14, Ch. 155, L. 1917; re-en. Sec. 728, R. C. M. 1921; amd. Sec. 13, Ch. 234, L. 1943.

References

Goodell v. Judith Basin County et al., 70 M 222, 227, 224 P 1110.

23-1315. (729) Voting in person by elector on election day. Any qualified elector who has marked his ballot as hereinbefore provided, who shall be in his precinct on election day, shall be permitted to vote in person, provided his said ballot has not already been deposited in the ballot-box.

History: En. Sec. 15, Ch. 110, L. 1915; re-en. Sec. 15, Ch. 155, L. 1917; re-en. Sec. 729, R. C. M. 1921.

References

Goodell v. Judith Basin County et al., 70 M 222, 227, 224 P 1110; *State ex rel. Mitchell v. District Court*, ___ M ___, 275 P 2d 642, 651.

23-1316. (730) Procedure when elector is present after marking absent or physically incapacitated voter ballot. In case any elector who shall have marked his ballot as an absent or physically incapacitated voter, as in this act provided, shall appear at the voting place of his precinct on election day, before his ballot or ballots shall have been deposited in the ballot-box, his envelope containing his ballot shall, if he so desires, be opened in his presence, and the ballot or ballots found therein shall be deposited in the ballot-box as hereinbefore provided. If such elector shall ask for a new ballot or ballots with which to vote, he shall be entitled to the same, but in such case his absent or physically incapacitated voter envelope shall not be opened, and the judges shall mark, or cause to be marked, across the face thereof, "unopened because voter appeared and voted in person," and then deposit the said envelope, unopened, in the ballot-box. If the envelope containing the absent or physically incapacitated voter ballot shall have been

marked "rejected as defective," and deposited in the ballot-box, such elector so appearing shall have the same right to vote as if he had not attempted to vote as an absent or physically incapacitated voter. If voting machines are there used, he shall vote by machine as other voters.

History: En. Sec. 16, Ch. 110, L. 1915; re-en. Sec. 16, Ch. 155, L. 1917; re-en. Sec. 730, R. C. M. 1921; amd. Sec. 14, Ch. 234, L. 1943.

References

Goodell v. Judith Basin County et al., 70 M 222, 227, 224 P 1110; State ex rel. Mitchell v. District Court, — M —; 275 P 2d 642, 651.

23-1317. (731) Opening of envelopes after deposit. If the aforesaid envelope containing an absent or physically incapacitated voter ballot shall have been deposited, unopened, in the ballot-box, the said envelope shall not be opened, without an order of a court of competent jurisdiction.

History: En. Sec. 17, Ch. 110, L. 1915; re-en. Sec. 17, Ch. 155, L. 1917; re-en. Sec. 731, R. C. M. 1921; amd. Sec. 15, Ch. 234, L. 1943.

References

Goodell v. Judith Basin County et al., 70 M 222, 227, 224 P 1110.

23-1318. (732) False swearing perjury—official misconduct a misdemeanor. If any person shall wilfully swear falsely to any affidavit in this act provided for, he shall, upon conviction thereof, be deemed guilty of perjury, and shall be punished as in such cases by law provided. If the county or city or town clerk, or any election officer, shall refuse or neglect to perform any of these duties prescribed by this act, or shall violate any of the provision thereof, or if any officer taking the affidavit provided for in section 23-1306 shall make any false statement in his certificate thereto attached, or look at any mark or marks made by the voter upon any such ballot, or permit or allow any other person to be present at the marking of any such ballot by the voter, or to see any mark or marks made thereon by the voter, he shall be deemed guilty of a misdemeanor, and shall be punished by a fine not exceeding five hundred dollars, or by imprisonment in the county jail not exceeding six months, or by both such fine and imprisonment.

History: En. Sec. 18, Ch. 110, L. 1915; amd. Sec. 18, Ch. 155, L. 1917; re-en. Sec. 732, R. C. M. 1921.

Collateral References

Elections—§314; Perjury—§5. 29 C.J.S. Elections § 327; 70 C.J.S. Perjury § 23.

References

Goodell v. Judith Basin County et al., 70 M 222, 227, 224 P 1110.

23-1319. (733) Voting machines—canvass of votes. In and for precincts where voting machines are to be used, the county or city or town clerk shall cause to be printed and shall provide ballots in the regular form of printed ballots, and sufficient printed ballots and sufficient in number for possible absent or physically incapacitated voters, and also poll-books and ballot-boxes such as lists required for the precincts in which printed ballots are used. Absent or physically incapacitated voters' ballots received in such precincts shall be cast as in this act provided, and all provisions of this act and of the election laws shall apply to the casting, canvassing, counting and returning of such ballots and votes, except as herein otherwise provided. In making the canvass, the votes cast by absent or physically incapacitated voters shall be added by the judges of election to the votes cast on the voting machines, and the results determined and reported accordingly.

History: En. Sec. 19, Ch. 110, L. 1915; amd. Sec. 19, Ch. 155, L. 1917; re-en. Sec. 733, R. C. M. 1921; amd. Sec. 16, Ch. 234, L. 1943.

Collateral References
Elections↔222.
29 C.J.S. Elections § 203.

References

Goodell v. Judith Basin County et al.,
70 M 222, 227, 224 P 1110.

23-1320. (734) Duty of elector if present on election day. In case any elector who shall have taken advantage of the provisions of this act, and marked his ballot as an absent or physically incapacitated voter, as in this act provided, shall not leave his county, or shall return thereto or shall have recovered physical capacity to go to the polls on or before election day, and in time to allow him to go to the polls, to-wit, to the voting place in his precinct, and to be admitted therein before the close of the polls, it shall be his duty so to go to the said voting place and to present himself to the judges of election at said voting place, and if he shall wilfully neglect so to do he shall be deemed guilty of a misdemeanor and, upon conviction thereof, shall be punished by a fine of not more than one hundred (\$100.00) dollars or by imprisonment not more than thirty (30) days in the county jail or by both such fine and imprisonment. If such an elector so appears the judges of election shall note in the poll-books and lists the fact of his appearance as well as whether or not he voted in person.

History: En. Sec. 20, Ch. 110, L. 1915; re-en. Sec. 20, Ch. 155, L. 1917; re-en. Sec. 734, R. C. M. 1921; amd. Sec. 17, Ch. 234, L. 1943.

Collateral References
Elections↔313.
29 C.J.S. Elections § 325.

References

Goodell v. Judith Basin County et al.,
70 M 222, 227, 224 P 1110.

23-1321. (735) Violation of law by elector or officer outside of state—change of venue. If any elector of this state or any other person or any officer shall, in any matter connected with voting outside of the state under the provisions of this law, in any manner violate any of the provisions of this act, or of any of the election or penal laws of this state applicable to voting under this act, in such manner that such violation would constitute an offense if committed within the state, then and in such case such elector, person, or officer shall be deemed guilty of a like offense, and be punishable to the same extent and in the same manner as if the act, omission, or violation had been committed in this state, and may be prosecuted in any county in this state; provided, however, that if the defendant or one of several defendants be a resident of the state he may have the case removed to the county in which the ballot was cast, or was to be cast, if not, in fact cast; and provided, further, that the court may order any such case removed to such county, subject always to the power of the court of any county to grant a change of venue as in other cases.

History: En. Sec. 21, Ch. 155, L. 1917; re-en. Sec. 735, R. C. M. 1921.

Collateral References
Elections↔313, 314.
29 C.J.S. Elections §§ 325, 327.

References

Goodell v. Judith Basin County et al.,
70 M 222, 227, 224 P 1110.

CHAPTER 14

VOTING BY ABSENT ELECTORS IN MILITARY SERVICE

- Section 23-1401. Registration of absent electors in military or related service.
 23-1402. Duty of county clerk, registration cards.
 23-1403. Mailing.
 23-1404. Prerequisites—affidavits, from whom.
 23-1405. Classification of registration cards.
 23-1406. Penalty applicable.

23-1401. Registration of absent electors in military or related service.

Any elector of this state who is absent from the state of Montana and the county of which he or she is a resident by reason of his or her active service in the land or naval forces of the United States, including members of the army nurse corps, the navy nurse corps, the women's navy reserve, the women's army auxiliary corps, and such other branches of the land or naval forces as may be organized hereafter by the government of the United States, or who is absent from the state of Montana and the county of which he or she is a resident by reason of his or her engaging in the actual service of the American national red cross association or the united service organizations or any similar organization auxiliary to the land and naval forces recognized by the government of the United States, shall be entitled to register for voting in the manner hereinafter provided as fully as if he or she were present at his or her place of residence.

History: En. Sec. 1, Ch. 99, L. 1943.

Collateral References

Elections 216.1.

29 C.J.S. Elections § 210.

23-1402. Duty of county clerk, registration cards. It shall be the duty of the county clerk of each county in this state to cause to be printed official war registration cards, four (4) by six (6) inches in size, on calendar stock other than white, to distinguish such cards from the registry cards provided for by section 23-502, which official war registration cards shall be substantially in the following form:

(Face)

OFFICIAL WAR REGISTRATION CARD

No. _____ County of _____, State of Montana

Name		Sex	Date	
Place of Birth	Date of Birth	Height	Occupation	
Residence: _____ (Give Montana address, street number, city or town)				
Length of time in _____		State	County	Town
If naturalized, state when _____			Where _____	
Place where last registered: _____				
Disability, if any _____				
To be filled in by County Clerk: _____				
Date Registered		Date Cancelled		

CERTIFICATE OF REGISTRANT

I, swear (or affirm) I am the elector whose name appears on the face of this card; the several statements thereon contained affecting my qualifications as an elector are true; I am actively engaged in the land (or naval) forces of the United States or an auxiliary to the land (or naval) forces recognized by the government of the United States; I am able to mark my ballot (or I am unable to mark my ballot by reason of the physical disability on this card specified), and I am not registered elsewhere within the State of Montana and claim no right to vote elsewhere than in the place on this card specified, so help me God.

Certified to by:

(To be signed by any commissioned officer.)

(Back)

CERTIFICATE OF LOST NATURALIZATION PAPERS.

I, swear (or affirm) I am the elector named on the face of this card; I am a naturalized citizen of the United States; my certificate of naturalization is lost or destroyed, or beyond my present reach, and I have no certified copy thereof; I came to the United States in the year; I was admitted to citizenship in the state (or territory) of County of, by the court during the year, I last saw my certificate of naturalization, or certified copy thereof, at

Certified to by:

(To be signed by any commissioned officer.)

History: En. Sec. 2, Ch. 99, L. 1943.

23-1403. Mailing. Upon receipt of any application for an official war registration card by any elector hereinbefore mentioned in this act, it shall be the duty of the county clerk to send such elector by mail, postage prepaid, one official war registration card, which registration card shall be enclosed in an envelope bearing upon the front thereof—in clear black type—the words, “OFFICIAL WAR REGISTRATION CARD CONTAINED HEREIN.”

History: En. Sec. 3, Ch. 99, L. 1943.

23-1404. Prerequisites—affidavits, from whom. It shall also be the duty of the county clerk to send by mail, postage prepaid, to any such elector hereinbefore mentioned in this act one (1) official war registration card, which registration card shall be enclosed in an envelope bearing upon the front thereof—in clear black type—the words, “OFFICIAL WAR REGISTRATION CARD CONTAINED HEREIN,” provided the county clerk is furnished an affidavit or affidavits by at least two (2) registered electors of the county in which such elector hereinbefore mentioned in this act resides,

setting forth the affiants are personally acquainted with such elector and are informed and have reason to believe such elector is engaged in the active service of the land or naval forces or the officially recognized organizations auxiliary thereto, and setting forth also the last known post office address of such elector; and provided further the county clerk shall not send such official war registration card as a result of such affidavit or affidavits, if he has previously sent such official war registration card to such elector hereinbefore mentioned in this act upon the application of such elector.

History: En. Sec. 4, Ch. 99, L. 1943.

23-1405. Classification of registration cards. Upon receipt by the county clerk of any official war registration card, properly filled out and duly signed and certified to as provided in this act, the county clerk shall classify such registry card according to the precinct in which the elector resides, and shall arrange the cards in each precinct in alphabetical order. The county clerk shall, upon receipt of any official war registration card, immediately enter upon the official register of the county in the proper precinct the full information given by said elector.

History: En. Sec. 5, Ch. 99, L. 1943.

23-1406. Penalty applicable. The penalty provided for by section 23-503, in the case of an elector residing within the county who registers, is hereby made applicable to violations of the provisions of this act.

History: En. Sec. 6, Ch. 99, L. 1943.

CHAPTER 15

REGISTRATION OF ELECTORS ABSENT FROM COUNTY OF THEIR RESIDENCE

Section 23-1501. Method of registration of voters absent from county.

23-1502. Registration card mailed upon application.

23-1503. Questions asked and answered in writing.

23-1501. Method of registration of voters absent from county. Any elector who is unable to make personal application for registration to vote by appearing before the county clerk and ex officio registrar of the county of his or her legal residence, by reason of being absent from the county, may register to vote prior to the close of registration, before any election to be held in the state of Montana, by appearing, executing and verifying under oath, before a notary public or other officer authorized to administer oaths, at any place within the continental limits of the United States of America, a registration card in the form prescribed in section 23-502, and returning such registration card, so executed and verified, to the county clerk and ex officio registrar of the county in which his or her legal residence is located in sufficient time to reach such county clerk and ex officio registrar before the close of registration; provided, however, such an elector shall not be entitled to have his name entered in the official register of electors until at least two (2) registered electors of the county in which such elector desiring to be registered has his place of residence, as stated in his application for registration, appear before the county clerk and ex officio registrar and make affidavit or affidavits in writing, stating they are personally

acquainted with the applicant for registration, are familiar with and know his signature, have seen him write and that the signature subscribed to the application for registration is the signature of such elector.

History: En. Sec. 1, Ch. 190, L. 1943.

Collateral References

Elections 216.1.

29 C.J.S. Elections § 210.

23-1502. Registration card mailed upon application. The county clerk and ex officio registrar of the county of an elector's legal residence shall furnish to any elector applying therefor, whether application be made by mail, telegram or telephone, one (1) of the printed registration cards provided for registration of electors, to be used by such elector in registering; said card to be transmitted by United States mail, with postage prepaid, by said county clerk and ex officio registrar to the address furnished by the elector at the time of making of his application.

History: En. Sec. 2, Ch. 190, L. 1943.

23-1503. Questions asked and answered in writing. In the case of any person who desires and who is entitled to register in the manner provided in section 23-1501, the questions required by section 23-510, to be asked each person registering, shall be propounded in writing and shall be transmitted by the county clerk and ex officio registrar, together with registration card, in the manner above provided, to the person so desiring to register, who shall answer such questions in writing and shall return such answers to the county clerk and ex officio registrar, together with completed registration card.

History: En. Sec. 3, Ch. 190, L. 1943.

CHAPTER 16

VOTING MACHINES—CONDUCT OF ELECTION WHEN USED

- Section 23-1601. Voting machines—secretary of state.
 23-1602. Specifications of machines required.
 23-1603. Purchase and use of voting machines at elections.
 23-1604. Payment for machines, how provided for.
 23-1605. Method of conducting elections.
 23-1606. Assistance to elector unable to record vote.
 23-1607. Ballots and instructions to voters.
 23-1608. City and county clerks to set up machines for use.
 23-1609. Irregular ballots.
 23-1610. Counting the votes.
 23-1611. Election returns.
 23-1612. Election laws applicable.
 23-1613. Penalty for neglect of duty by election officer.
 23-1614. Penalty for tampering with or injuring machines.
 23-1615. Penalty for violation of duty by judge of election.
 23-1616. Penalty for fraudulent returns or certificates.
 23-1617. Experimental use of machines—defective machines.
 23-1618. Approved machines—continuation of use.

23-1601. (757) Voting machines—secretary of state. It shall be the duty of the secretary of state to examine, or cause to be examined, all voting or ballot machines in order to determine whether such machines comply with the requirements of this chapter, and can safely be used by voters at elections under the provisions of said chapter, and no machine or

machines shall be provided or used at any election in this state unless such machine or machines shall have received the approval of the secretary of state as herein provided. The secretary of state may employ two qualified mechanics, who shall be qualified electors of the state of Montana, to examine said machines and assist him in the discharge of his duties under said chapter, the compensation to be paid such qualified mechanics not to exceed the sum of ten dollars (\$10.00) each for each day actually employed. Any machine or machines which shall have the approval of the secretary of state may be provided for in this chapter. The report of the secretary of state on each and every kind of voting machine shall be filed in his office within thirty days after examining the machine, and he shall, within five days after the filing of any report approving any machine or machines transmit to the board of county commissioners, city or town council or other board of officers having charge and control of elections in each of the counties, cities and towns in this state, a list of the machines so approved. No machine or machines shall be used unless they shall have received the approval of the secretary of state at least sixty days prior to any election at which such machine or machines are to be used. The compensation of the mechanics and all other expenses connected with the examination of any machine shall be paid, or cause to be paid, by the person or company submitting a machine for examination before the filing of the report thereon. The amount of such expenses shall be certified by the state auditor and paid by the state treasurer.

History: En. Sec. 1, Ch. 168, L. 1907; Sec. 609, Rev. C. 1907; re-en. Sec. 757, R. C. M. 1921; amd. Sec. 1, Ch. 19, L. 1943.

Operation and Effect

This act is not invalid as in contravention of section 1, article IX, Constitution of Montana, providing that all elections shall be "by ballot," the term "ballot"

being employed, not to designate a piece of paper, but a method to insure, so far as possible, the secrecy and integrity of the popular vote. *State ex rel. Fenner v. Keating*, 53 M 371, 377 et seq., 163 P 1156.

Collateral References

Elections \Rightarrow 222.
29 C.J.S. Elections § 203.
18 Am. Jur. 324, Elections, § 213.

23-1602. (758) Specifications of machines required. No machine or machine system shall be approved by the secretary of state unless it is so constructed as to afford every elector a reasonable opportunity to vote for any person for any office, or for or against any proposition for whom, or for or against which he is entitled by law to vote, and enable him to do this in secrecy; and it must be so constructed as to preclude an elector from voting for any candidate for the same office or upon any question more than once, and from voting for any person for any office or on any proposition, for whom or on which he is not entitled to vote. The machine or machine system must admit of his voting a split ticket as he may desire. It must also be constructed as to register or record each and every vote cast. For presidential electors one device may be provided for voting for all the candidates on one party at one time by the use of such device, opposite or adjacent to which shall be a ballot on the machine containing the names of all the candidates for all presidential electors for that party, and a vote registered or recorded by the use of such device shall be counted for each of such candidates on said ballot. The machine must be so constructed that it cannot be tampered with or manipulated for any fraudulent purpose; and the machine

must be so locked, arranged, or constructed, that during the progress of the voting no person can see or know the number of votes registered or recorded for any candidate or for or against any proposition.

History: En. Sec. 2, Ch. 168, L. 1907; Sec. 610, Rev. C. 1907; re-en. Sec. 758, R. C. M. 1921; amd. Sec. 2, Ch. 19, L. 1943.

Operation and Effect

In an action of quo warranto to determine the title to an office, the claim was made that the voting machines used at an election in one of the counties of the state did not comply with the law which authorizes their use, basing the contention upon the provision of above section, that "the machine must be constructed so that it cannot be tampered with or manipulated for any fraudulent purpose." The provision quoted is, however, to be read in connection with the remainder of

the act and, when so read, it becomes obvious that the act does not require a voting machine which will be proof against all tampering or manipulation, but one which, when honestly operated, will enable an elector to secretly cast his vote as he wishes to cast it and have it counted as cast, and which cannot be tampered with or manipulated in such a way that, though properly operated by the elector, it would seem to receive and record his vote without doing so. State ex rel. Fenner v. Keating, 53 M 371, 381, 163 P 1156.

Collateral References

Elections⌚27.
29 C.J.S. Elections § 191.

23-1603. (759) Purchase and use of voting machines at elections. The boards of county commissioners of counties of the first class shall, and the boards of county commissioners of other counties and city councils of all cities and towns, may, at their option, adopt and purchase, for use in the various precincts, any voting machine approved in the manner above set forth in section 23-1601, by the secretary of state, and none other. If it shall be impracticable to supply each and every election district with a voting machine or voting machines at any election following the adoption of such machines in a city, village, or town, as many may be supplied as it is practicable to procure, and the same shall be used in such precinct of the municipality, as the proper officers may order. The proper officers of any city, village, or town may, not later than the tenth (10th) day of September, in any year in which a general election is held, unite two or more precincts into one for the purpose of using therein at such election a voting machine, and the notice of such uniting shall be given in the manner prescribed by law for the change of election districts.

History: En. Sec. 3, Ch. 168, L. 1907; Sec. 611, Rev. C. 1907; amd. Sec. 1, Ch. 6, L. 1909; re-en. Sec. 759, R. C. M. 1921; amd. Sec. 1, Ch. 26, L. 1947.

Collateral References

Elections⌚222.
29 C.J.S. Elections § 203.
18 Am. Jur. 324, Elections, § 213.

23-1604. (760) Payment for machines, how provided for. Payment for voting machines purchased may be provided by the issuance of interest-bearing bonds, certificates of indebtedness, or other obligation, which will be a charge upon such county, city, or town. Such bonds, certificates, or other obligation may be made payable at such time or times, not exceeding ten years from the date of issue, as may be determined, but shall not be issued or sold at less than par.

History: En. Sec. 4, Ch. 168, L. 1907; Sec. 612, Rev. C. 1907; re-en. Sec. 760, R. C. M. 1921.

Collateral References

Counties⌚164, 173(1); Municipal Corporations⌚897, 910.
20 C.J.S. Counties §§ 248, 258; 64 C.J.S. Municipal Corporations §§ 1893, 1905.

23-1605. (761) Method of conducting elections. (1) The room in which the election is held shall have a railing separating that part of the

room to be occupied by the election officers from that part of the room occupied by the voting machine. The exterior of the voting machine and every part of the polling-place shall be in plain view of the judges. The machine shall be so placed that no person on the opposite side of the railing can see or determine how the voter casts his vote, and that no person can so see or determine from the outside of the room. After the opening of the polls, the judges shall not allow any person to pass within the railing to that part of the room where the machine is situated, except for the purpose of voting and except as provided in the next succeeding section of this act; and they shall not permit more than one voter at a time to be in such part of the room. They shall not themselves remain or permit any person to remain in any position that would permit him or them to see or ascertain how the voter votes or how he has voted. No voter shall remain within the voting machine booth or compartment longer than one minute, and if he should refuse to leave it after that lapse of time he shall at once be removed by the judges. The election board of each election precinct in which a voting machine is used shall consist of three judges of election. Where more than one machine is to be used in an election precinct, one additional judge shall be appointed for each additional machine. Before each election at which voting-machines are to be used, the custodian shall instruct all judges of election that are to serve thereat in the use of the machine and their duties in connection therewith; and he shall give to each judge that has received such instruction, and is fully qualified to conduct the election with the machine, a certificate to that effect. For the purpose of giving such instruction, the custodian shall call such meeting or meetings of the judges of election as shall be necessary.

(2) Each judge of election shall attend such meeting or meetings and receive such instructions as shall be necessary for the proper conduct of the election with the machine; and, as compensation for the time spent in receiving such instruction, each judge that shall qualify for and serve in the election shall receive the sum of one dollar, to be paid to him at the same time and in the same manner as compensation is paid to him for his services on election day. No such judge of election shall serve in any election at which a voting machine is used, unless he shall have received such instruction and is fully qualified to perform his duties in connection with the machine, and has received a certificate to that effect from the custodian of the machines; provided, however, that this shall not prevent the appointment of a judge of election to fill a vacancy in an emergency.

History: En. Sec. 5, Ch. 168, L. 1907;
Sec. 613, Rev. C. 1907; amd. Sec. 1, Ch. 99,
L. 1909; re-en. Sec. 761, R. C. M. 1921.

Collateral References
Elections \Rightarrow 222.
29 C.J.S. Elections § 203.

23-1606. (762) Assistance to elector unable to record vote. If any voter shall, in the presence of the judges of election, declare that he is unable to read or write the English language, or that by reason of a physical disability or total blindness he is unable to register or record his vote upon the voting machine, he shall be assisted as provided by section 23-1213. Any person who shall deceive any elector in registering or recording his vote under this section, or who shall register or record his vote in any other way than as requested by such person or who shall give information to any

person as to what ticket or for what person or persons such person voted, shall be punished as provided in section 94-1407.

History: En. Sec. 6, Ch. 168, L. 1907;
Sec. 614, Rev. C. 1907; re-en. Sec. 762,
R. C. M. 1921; amd. Sec. 1, Ch. 31, L. 1935.

Collateral References

Elections—220.

29 C.J.S. Elections § 208.

18 Am. Jur. 328, Elections, §§ 218 et seq.

23-1607. (763) Ballots and instructions to voters. (1) Not more than ten (10) or less than three (3) days before each election at which voting machines are to be used, the board, or officials, charged with the duty of providing ballots, shall publish in newspapers representing at least two (2) political parties a diagram of reduced size showing the face of the voting machine, after the official ballot labels are arranged thereon, together with illustrated instructions how to vote, and a statement of the locations of such voting machines as shall be on public exhibition; a voting machine shall at all time be on exhibition for public demonstration in the office of the county clerk and recorder in the counties where said voting machines are used, and it shall be the duty of said county clerk and recorder to demonstrate and explain the working and operation of said voting machine to any inquiring voter; or in lieu of such publication, said board or officials may send by mail or otherwise at least three (3) days before the election, a printed copy of said reduced diagram to each registered voter.

(2) Not later than forty (40) days before each election at which voting machines are to be used the secretary of state shall prepare samples of the printed matter and supplies named in this section, and shall furnish one of each thereof to the board or officials having charge of election in each county, city, or village in which the machines are to be used, such samples to meet the requirements of the election to be held, and to suit the construction of the machine to be used.

(3) The board or officials charged with the duty of providing ballots, shall provide for each voting machine for each election the following printed matter and supplies; suitable printed or written directions to the custodian for testing and preparing the voting machines for the election; one certificate on which the custodian can certify that he has properly tested and prepared the voting machine for the election; one certificate on which some person other than the custodian preparing the machine, can certify that the voting machine has been examined and found to have been properly prepared for the election; one certificate on which the party representatives can verify that they have witnessed the testing and preparation of the machines; one certificate on which the deliverer of the machine can certify that he has delivered the machines to the polling-places in good order; one card stating the penalty for tampering with or injuring a voting machine; two seals for sealing the voting machine; one envelope in which the keys to the voting machine can be sealed and delivered to the election officers, said envelope to have printed or written thereon the designation and location of the election district in which the machine is to be used, the number of machine, the number shown on the protective counter thereof after the machine has been prepared for the election and the number or other designation on such seal as the machine is sealed with; said envelope to have attached to it a detachable receipt for the delivery of the keys of the

voting machine to the judge of election; one envelope in which keys to the voting machine can be returned by the election officers after the election; one card stating the name and telephone address of the custodian on the day of the election; two statements of canvass on which the election officers can report the canvass of votes as shown on the voting machine, together with other necessary information relating to the election, said statements of canvass to take the place of all tally papers, statements, and returns as provided heretofore; three (3) complete sets of ballot labels; two diagrams of the face of the machine with the ballot labels thereon, each diagram to have printed above it the proper instructions to voters for voting on the machine; six (6) suitable printed instructions to judges of election; six (6) notices to judges of election to attend the instruction meeting; six (6) certificates that the judges of election have attended the instruction meeting, have received the necessary instruction, and are qualified to conduct the election with the machine.

(4) The ballot labels shall be printed in black ink on clear white material of such size and arrangement as shall suit the construction of the machine; provided, however, that the ballot labels for the questions may contain a condensed statement of each question to be voted on, followed by the words "Yes" and "No"; and provided further, that the titles of the officers thereon shall be printed in type as large as the space for each office will reasonably permit, and wherever more than one candidate will be voted for for an office, there shall be printed below the office title thereof the words "vote for any two," or such number as the voter is lawfully entitled to vote for for such office.

(5) When any person is nominated for an office by more than one political party his name shall be placed upon the ticket under the designation of the party which first nominated him; or, if nominated by more than one party at the same time, he shall, within the time fixed by law for filing certificates of nomination, file with the officer with whom his certificate of nomination is required to be filed, a written statement indicating the party designation under which he desires his name to appear upon the ballot, and it shall be so printed. If he shall refuse or neglect to so file such a statement, the officer with whom the certificate of nomination is required to be filed shall place his name under the designation of either of the parties nominating him, but under no other designation whatsoever.

(6) If the election be one at which all the candidates for office of presidential electors are to be voted for with one device, the county commissioners shall furnish for each machine twenty-five (25) ballots for each political party, each ballot containing the names of the candidates for the office of presidential electors of such party and a suitable space for writing in names, so that the voter can vote thereon for part of the candidates for the office of presidential electors of one party and part of the candidates therefor of one or more other parties or for persons for that office not nominated by any party. For election precincts in which voting machines are to be used, no books or blanks for making poll-lists shall be provided, but in lieu thereof, the registry lists shall contain a column in which can be entered the number of each voter's ballot as indicated by the number registered on the public counter as he emerges from the voting machine.

History: En. Sec. 7, Ch. 168, L. 1907;
Sec. 615, Rev. C. 1907; amd. Sec. 2, Ch. 99,
L. 1909; amd. Sec. 1, Ch. 246, L. 1921;
re-en. Sec. 763, R. C. M. 1921.

Collateral References
Elections ⇨ 222.
29 C.J.S. Elections § 203.

23-1608. (764) City and county clerks to set up machines for use. The city or county clerks of each city or county in which a voting machine is to be used shall cause the proper ballots to be put upon each machine corresponding with the sample ballots herein provided for, and the machines in every way put in order, set and adjusted ready for use in voting when delivered at the precinct, and for the purpose of so labeling the machines, putting in order, setting and adjusting the same, they may employ one or more competent persons, and they shall cause the machine so labeled, in order and set and adjusted, to be delivered at the voting precinct, together with all necessary furniture and appliances that go with the same in the room where the election is to be held in the precinct, in time for the opening of the polls on election day; provided, however, that a shield of tin painted black made to conform with the shape of the keys or levers on said voting machine, shall be placed over the keys or levers not in use on the face of the ballot of the voting machine; said shields to be plainly marked with the words "not in use"; and provided that a space of at least one row of keys or levers be left vacant and marked "not in use" between the rows assigned to the two parties obtaining the largest number of votes cast at the previous general election; and provided, also that the general ballot used on the voting machine shall conform in the location of the various parties and the location of the various names of the candidates, with the paper ballots used in the precincts where voting machines are not in use. Thus the party assigned to the first vertical column on the paper ballot be given the first vertical column or the top horizontal row on the voting machine; the party assigned to the second vertical column on the paper ballot be given the second vertical column, or the second horizontal row to be voted on the voting machine. The judges shall compare the ballots on the machine with the sample ballot, see that they are correct, examine and see that all the counters, if any, in the machine are set at zero, and that the machine is otherwise in perfect order, and they shall not thereafter permit the machine to be operated or moved except by electors in voting, and they shall also see that all necessary arrangements and adjustments are made for voting irregular ballots on the machine, if such machine be so arranged.

History: En. Sec. 8, Ch. 168, L. 1907;
Sec. 616, Rev. C. 1907; amd. Sec. 2, Ch.
246, L. 1921; re-en. Sec. 764, R. C. M. 1921.

23-1609. (765) Irregular ballots. In case a voting machine be adopted which provides for the registry or recording of votes for candidates whose names are not on the official ballot, such ballots shall be denominated irregular ballots. A person whose name appears on a ballot, or on or in a machine or machine system, shall not be voted for for the same office or on or in any regular device for casting an irregular ticket, and any such vote shall not be counted, except for the office of presidential electors, and an elector may vote in or on such irregular device for one or more persons nominated by one party with one or more persons nominated by any one or all other parties, or for one or more persons nominated by one or more par-

ties with one or more persons not in nomination, or he may vote in such irregular device a presidential electoral ticket composed entirely of names of persons not in nomination.

History: En. Sec. 9, Ch. 168, L. 1907;
Sec. 617, Rev. C. 1907; re-en. Sec. 765,
R. C. M. 1921.

23-1610. (766) Counting the votes. As soon as the polls of the election are closed the judges shall immediately lock the machine, or remove the recording device so as to provide against voting, and open the registering or recording compartments in the presence of any person desiring to attend the same, and shall proceed to ascertain the number of votes cast for each person voted for at the election, and to canvass, record, announce, and return the same as provided by law.

History: En. Sec. 10, Ch. 168, L. 1907;
Sec. 618, Rev. C. 1907; re-en. Sec. 766,
R. C. M. 1921.

Collateral References

Elections \Rightarrow 222.
29 C.J.S. Elections § 203.

23-1611. (767) Election returns. (1) The judges, as soon as the count is completed and fully ascertained, shall place the machine for one hour in such a position that the registering or recording compartments will be in full view of the public and any person desiring to view the number of votes cast for each person voted for at the election, must be permitted to do so. Immediately after the above said one hour shall have expired the judges shall seal, close, lock the machine or remove the record so as to provide against voting or being tampered with, and in case of a machine so sealed or locked, it shall so remain for a period of at least thirty (30) days, unless opened by order of a court of competent jurisdiction. When irregular ballots have been voted, the judges shall return them in a properly sealed package endorsed "irregular ballots," and indicating the precinct and county and file such package with the city or county clerk. It shall be preserved for six (6) months after such election and may be opened and its contents examined only upon an order of a court of competent jurisdiction; at the end of such six (6) months unless ordered otherwise by the court, such package and its contents shall be destroyed by the city or county clerk. All tally sheets taken from such machine, if any, shall be returned in the same manner.

(2) The officers heretofore charged with the duty of furnishing tally sheets and return blanks shall furnish suitable return blanks and certificates to the officers of election. Such return sheets shall have each candidate's name designated by the same reference character that said candidate's name bears on the ballot labels and counters, and shall make provision for writing in of the vote for such candidate in figures and shall also provide for writing in of the vote in words. Such return sheet shall also provide for the return of the vote on questions. It shall also have a blank thereon, on which can be marked the precinct, ward, etc., of which said return sheet bears the returns and the number and make of the machine used. Said return sheet shall also have a certificate thereon, to be executed before the polls open by the judges of election, stating that all counters except the protective counter, if any, and except as otherwise noted thereon, stood at "000" at the beginning of the election, and that all of said counters had been carefully

examined before the beginning of the election; that the ballot labels were correctly placed on the machine and correspond to the sample ballot, and such other statements as the particular machine may require; and shall provide for the signature of the election officers. Said return sheet shall also have thereon a second certificate stating the manner of closing the polls, the manner of verifying the returns, that the foregoing returns are correct, giving the indication of the public counter, and poll-list, and protective counter, if any, at the close of the election. Such certificate shall properly specify the procedure of canvassing the vote and locking the machine, etc., for the particular type of machine used, and such certificate shall be such that the election officers can properly subscribe to it as having been followed and shall have provisions for the signature of the election officers. The election officers shall conform their procedure to that specified in the certificate to which they must certify. The certificate and attest of the election officers shall appear on each return sheet.

History: En. Sec. 11, Ch. 168, L. 1907;
Sec. 619, Rev. C. 1907; amd. Sec. 3, Ch.
246, L. 1921; re-en. Sec. 767, R. C. M. 1921.

Collateral References

Elections⇒248, 250.
29 C.J.S. Elections §§ 230, 231.

23-1612. (768) Election laws applicable. All laws of this state applicable to elections where voting is done in another manner than by machine, and all penalties prescribed for violation of such laws, shall apply to elections and precincts where voting machines are used, in so far as they are not in conflict with the provisions of this chapter.

History: En. Sec. 12, Ch. 168, L. 1907;
Sec. 620, Rev. C. 1907; re-en. Sec. 768,
R. C. M. 1921.

23-1613. (769) Penalty for neglect of duty by election officer. Any public officer, or any election officer upon whom any duty is imposed by this act, who shall wilfully neglect or omit to perform any such duties, or do any act prohibited herein for which punishment is not otherwise provided herein, shall, upon conviction, be imprisoned in the state prison for not less than one year or more than three years, or be fined in any sum not exceeding one thousand dollars, or may be punished by both such imprisonment and fine.

History: En. Sec. 13, Ch. 168, L. 1907;
Sec. 621, Rev. C. 1907; re-en. Sec. 769,
R. C. M. 1921.

Collateral References

Elections⇒314.
29 C.J.S. Elections § 327.

23-1614. (770) Penalty for tampering with or injuring machines. Any person not being an election officer who, during any election or before any election, after a voting machine has had placed upon it the ballots for such election, shall tamper with such machine, disarrange, deface, injure, or impair the same in any manner, or mutilate, injure, or destroy any ballot placed thereon or to be placed thereon, or any other appliance used in connection with such machine, shall be imprisoned in the state prison for a period of not more than ten years, or be fined not more than one thousand dollars, or be punished by both such fine and imprisonment.

History: En. Sec. 14, Ch. 168, L. 1907;
Sec. 622, Rev. C. 1907; re-en. Sec. 770,
R. C. M. 1921.

Collateral References

Elections⇒309.
29 C.J.S. Elections §§ 324, 334.

23-1615. (771) Penalty for violation of duty by judge of election. Whoever, being a judge of election, with intent to permit or cause any voting machine to fail to correctly register or record any vote cast thereon, tampers with or disarranges such machine in any way, or any part or appliance thereof, or who causes or consents to said machine being used for voting at any election with knowledge of the fact that the same is not in order or not perfectly set and adjusted, so that it will correctly register or record all votes cast thereon, or who, for the purpose of defrauding or deceiving any voter, or of causing it to be doubtful for what ticket or candidate or candidates or proposition any vote is cast, or of causing it to appear upon said machine that votes cast for one ticket, candidate, or proposition were cast for another ticket, candidate, or proposition, removes, changes, or mutilates any ballot on said machine, or any part thereof, or does any other like thing, shall be imprisoned in the state prison not more than ten years, or fined not exceeding one thousand dollars, or punished by both such fine and imprisonment.

History: En. Sec. 15, Ch. 168, L. 1907;
Sec. 623, Rev. C. 1907; re-en. Sec. 771,
R. C. M. 1921.

23-1616. (772) Penalty for fraudulent returns or certificates. Any judge or clerk of an election who shall purposely cause the vote registered or recorded on or in such machine to be incorrectly taken down as to any candidate or proposition voted on, or who shall knowingly cause to be made or signed any false statement, certificate, or return of any kind, of such vote, or who shall knowingly consent to such things, or any of them, being done, shall be imprisoned in the state prison not more than ten years, or fined not more than one thousand dollars or punished by both such fine and imprisonment.

History: En. Sec. 16, Ch. 168, L. 1907;
Sec. 624, Rev. C. 1907; re-en. Sec. 772,
R. C. M. 1921.

23-1617. (773) Experimental use of machines—defective machines. The proper officers authorized by section 23-1603 to adopt voting machines, may provide for the experimental use at an election of a machine or machines, approved by the secretary of state, in one or more precincts, without a formal adoption or purchase thereof, and the use thereof at such election shall be as valid for all purposes as if formally adopted. If from any cause a machine becomes unworkable, or unfit for use, voting shall proceed as in cases where machines are not used, and the county clerk must furnish each voting place with the supply of ballots and other supplies required by the election laws, to be used in case of emergency herein provided for, and in such case only.

History: En. Sec. 17, Ch. 168, L. 1907; 1921; re-en. Sec. 773, R. C. M. 1921; amd.
Sec. 625, Rev. C. 1907; amd. Sec. 3, Sec. 3, Ch. 19, L. 1943.
Ch. 99, L. 1909; amd. Sec. 4, Ch. 246, L.

23-1618. Approved machines—continuation of use. All voting machines heretofore approved in accordance with the provisions of said sections 23-1601 and 23-1602 prior to the amendment thereof by this act, and now owned and used by any of the several counties, cities or towns in this

state, may be continued in use by such counties, cities and towns without the same being required to be again approved by the secretary of state in accordance with the provisions of said sections as hereby amended.

History: En. Sec. 4, Ch. 19, L. 1943.

CHAPTER 17

ELECTION RETURNS

- Section 23-1701. Canvass to be public and without adjournment.
 23-1702. Mode of canvassing.
 23-1703. Where ballots are in excess of names on check-list.
 23-1704. What ballots must be counted.
 23-1705. Ascertaining the number of votes cast and persons voted for.
 23-1706. Ballots to be strung and inclosed in sealed envelopes.
 23-1707. Rejected ballots.
 23-1708. Poll-books—signing and certification of.
 23-1709. Election returns by judges—how made.
 23-1710. Custody of election returns.
 23-1711. Delivery to county clerk.
 23-1712. Filing of ballots and stubs by county clerk.
 23-1713. Keeping returns pending contest.
 23-1714. Disposition of returns prior to canvass of vote.
 23-1715. Clerk to file in his office books, papers, etc.

23-1701. (774) Canvass to be public and without adjournment. As soon as the polls are closed, the judges must immediately proceed to canvass the votes given at such election. The canvass must be public in the presence of bystanders and must be continued without adjournment until completed and the result thereof is publicly declared.

History: Ap. p. Sec. 22, p. 380, Bannack Stat.; re-en. Sec. 22, p. 464, Cod. Stat. 1871; re-en. Sec. 21, p. 75, L. 1876; re-en. Sec. 535, 5th Div. Rev. Stat. 1879; re-en. Sec. 1027, 5th Div. Comp. Stat. 1887; amd. Sec. 1400, Pol. C. 1895; re-en. Sec. 572, Rev. C. 1907; re-en. Sec. 774, R. C. M. 1921. Cal. Pol. C. Sec. 1252.

related sections in *Harrington v. Crichton*, 53 M 388, 392, 164 P 537; *Maddox v. Board of State Canvassers*, 116 M 217, 223, 149 P 2d 112.

Collateral References

Elections—259-261.
 29 C.J.S. Elections § 237.
 18 Am. Jur. 346, Elections, §§ 252 et seq.

References

Cited and applied in connection with

23-1702. (775) Mode of canvassing. The canvass must commence by a comparison of the poll-lists from the commencement, and the correction of any mistakes that may be found therein, until they are found to agree. The judges must then take out of the box the ballots unopened except to ascertain whether each ballot is single, and count the same to determine whether the number of ballots corresponds with the number of names on the poll-lists. If two or more ballots are found so folded together as to present the appearance of a single ballot, they must be laid aside until the count of the ballots is completed, and if, on comparing the count with the poll-lists and further considering the appearance of such ballots, a majority of the judges are of the opinion that the ballots thus folded together were voted by one elector, they must be rejected; otherwise they must be counted.

History: Ap. p. Sec. 23, p. 380, Bannack Stat.; re-en. Sec. 23, p. 464, Cod. Stat. 1871; re-en. Sec. 22, p. 75, L. 1876; re-en. Sec. 546, 5th Div. Rev. Stat. 1879; re-en.

Sec. 1028, 5th Div. Comp. Stat. 1887; amd. Sec. 1401, Pol. C. 1895; re-en. Sec. 573, Rev. C. 1907; re-en. Sec. 775, R. C. M. 1921. Cal. Pol. C. Sec. 1253.

References

Cited and applied in connection with

other related sections in *Harrington v. Crichton*, 53 M 388, 392, 164 P 537.

Collateral References

18 Am. Jur. 346, Elections, §§ 252 et seq.

23-1703. (776) Where ballots are in excess of names on check-list. If the ballots then are found to exceed in number the whole number of names on the poll-list, they must be placed in the box (after being purged in the manner above stated), and one of the judges must, publicly, and without looking in the box, draw therefrom singly and destroy unopened so many ballots as are equal to such excess. And the judges must make a record on the poll-list of the number of ballots so destroyed.

History: Ap. p. Sec. 24, p. 380, Bannack Stat.; re-en. Sec. 24, p. 464, Cod. Stat. 1871; re-en. Sec. 23, p. 76, L. 1876; re-en. Sec. 537, 5th Div. Rev. Stat. 1879; re-en. Sec. 1029, 5th Div. Comp. Stat. 1887; amd. Sec. 1402, Pol. C. 1895; re-en. Sec. 574, Rev. C. 1907; re-en. Sec. 776, R. C. M. 1921. Cal. Pol. C. Sec. 1255.

References

State ex rel. *Riley v. District Court*, 103 M 576, 588, 64 P 2d 115.

Collateral References

Elections 241.
29 C.J.S. Elections § 224.

23-1704. (777) What ballots must be counted. In the canvass of the votes, any ballot which is not indorsed as provided in this code by the official stamp is void and must not be counted, and any ballot or parts of a ballot from which it is impossible to determine the elector's choice is void and must not be counted; if part of a ballot is sufficiently plain to gather therefrom the elector's intention, it is the duty of the judges of election to count such part.

History: En. Sec. 30, p. 143, L. 1889; re-en. Sec. 1403, Pol. C. 1895; re-en. Sec. 575, Rev. C. 1907; re-en. Sec. 777, R. C. M. 1921.

Indistinct and Irregular Marking of Ballots

A ballot bearing a rather indistinct "X" before contestant's name but sufficient to be discernible should have been counted for him where there was no erasure and the elector voted for no other candidate for that office; and under the rule that the elector's intention must plainly appear, where the voter marked two squares for the office of sheriff, one of which showed an extra line through the "X" indicating perhaps, that the voter changed his mind but for the fact that squares before the names of other candidates were marked similarly, the intention was not clear and the ballot should not have been counted. *Peterson v. Billings*, 109 M 390, 392, 96 P 2d 922.

Liberal Construction—Intention of Voter

Under this section, and the rule that election laws must be liberally construed, held, that a ballot showing the intersection of the "X" outside the square should have been counted for contestant, and that one

showing the intersection of the cross squarely on the line of the square was properly so counted for him. *Peterson v. Billings*, 109 M 390, 393, 96 P 2d 922.

Operation and Effect

Where, from the manner in which a ballot was marked, it was impossible to determine the elector's choice, the ballot was void under this section, and should not have been counted in an election contest. *Carwile v. Jones*, 38 M 590, 598, 101 P 153.

This section was enacted prior to the provision for a stub at the head of the ballot. The legislature, by providing for the stub to be numbered, and to be removed only at the time of depositing the ballot in the ballot-box, has hit upon an effective method of guarding against fraud and illegal voting, and has insured the deposit of the ballot in the ballot-box, and the provisions of the section should now be construed in the light of the changed conditions. Hence where ballots had been delivered to electors by the judges of election with the official stamp apparently in the place in which the law requires it to be, although in reality it was on the stub instead of on the ballot proper, the act of the judges in removing

the stamp with the stub, thus leaving the ballot without the official designation, did not render the ballots void, and the same should have been counted. *Harrington v. Crichton*, 53 M 388, 396, 164 P 537.

References

Cited or applied as section 1403, Political Code, in *State ex rel. Brooks v. Fran-*

sham, 19 M 273, 292, 48 P 1; *Goodell v. Judith Basin County et al.*, 70 M 222, 242, 224 P 1110; *State ex rel. Riley v. District Court*, 103 M 576, 588, 64 P 2d 115.

Collateral References

Elections \hookrightarrow 224.
29 C.J.S. Elections § 211.

23-1705. (778) Ascertaining the number of votes cast and persons voted for. The ballots and poll-lists agreeing or being made to agree, the judges must then proceed to count and ascertain the number of votes cast for each person voted for. In making such count the ballots must be opened singly by one of the judges, and the contents thereof, while exposed to the view of the other judges, must be distinctly read aloud by the judge who opens the ballot. As the ballots are read, each clerk must write at full length on a sheet to be known as a tally-sheet the name of every person voted for and of the office for which he received votes, and keep by tallies on such sheet the number of votes for each person. The tally-sheets must then be compared and their correctness ascertained, and the clerks must, under the supervision of the judges, immediately thereafter set down, at length and in their proper places in the poll-books, the names of all persons voted for, the offices for which they respectively received votes, and the total number of votes received by each person, as shown by the tally-sheets. No ballot or vote rejected by the judges must be included in the count provided for in this section.

History: Ap. p. Sec. 25, p. 380, *Bannack Stat.*; re-en. Sec. 25, p. 464, *Cod. Stat.* 1871; re-en. Sec. 24, p. 76, *L. 1876*; re-en. Sec. 538, 5th Div. *Rev. Stat.* 1879; re-en. Sec. 1030, 5th Div. *Comp. Stat.* 1887; amd. Sec. 1404, *Pol. C.* 1895; re-en. Sec. 576, *Rev. C.* 1907; re-en. Sec. 778, *R. C. M.* 1921.

References

Dubie v. Batani, 97 M 468, 476, 37 P

2d 662; *Maddox v. Board of State Canvassers*, 116 M 217, 223, 149 P 2d 112; *State ex rel. Thomas v. District Court*, 116 M 510, 513, 154 P 2d 980.

Collateral References

Elections \hookrightarrow 241.
29 C.J.S. Elections § 224.

23-1706. (779) Ballots to be strung and inclosed in sealed envelopes. The ballots, as soon as read or rejected for illegality, must be strung upon a string by one of the judges, and must not thereafter be examined by any person, but must, as soon as all legal ballots are counted, be carefully sealed in a strong envelope, each member of the judges writing his name across the seal.

History: En. Sec. 1405, *Pol. C.* 1895; re-en. Sec. 577, *Rev. C.* 1907; re-en. Sec. 779, *R. C. M.* 1921. *Cal. Pol. C. Sec.* 1259.

Operation and Effect

Failure of the judges of election of a voting precinct to place the voted ballots on a string in compliance with the provisions of this section did not obstruct or

prevent the ascertainment of the result of the election, and was insufficient to impeach the returns of the precinct. *Dubie v. Batani*, 97 M 468, 479, 37 P 2d 662.

Collateral References

Elections \hookrightarrow 255.
29 C.J.S. Elections § 234.

23-1707. (780) Rejected ballots. Any ballot rejected for illegality must be marked by the judges, by writing across the face thereof "Rejected on the ground of _____," filling the blank with a brief state-

ment of the reasons for the rejection, which statement must be dated and signed by a majority of the judges.

History: En. Sec. 1406, Pol. C. 1895; re-en. Sec. 578, Rev. C. 1907; re-en. Sec. 780, R. C. M. 1921.

Collateral References

Elections 224.
29 C.J.S. Elections § 211.

23-1708. (781) Poll-books—signing and certification of. As soon as all the votes are counted and the ballots sealed up, the poll-books must be signed and certified to by the judges and clerks of election substantially as in the form in section 23-702.

History: En. Sec. 1407, Pol. C. 1895; re-en. Sec. 579, Rev. C. 1907; re-en. Sec. 781, R. C. M. 1921.

23-1709. (782) Election returns by judges—how made. The judges must, before they adjourn, inclose in a strong envelope, securely sealed and directed to the county clerk, the check-lists, all certificates of registration received by them, the lists of the persons challenged, both of the poll-books, both of the tally-sheets, and the official oaths taken by the judges and clerks of election; and must inclose in a separate package or envelope, securely sealed and directed to the county clerk, all unused ballots with the numbered stubs attached; and must also inclose in a separate package or envelope, securely sealed and directed to the county clerk, all ballots voted, including all voted ballots which, for any reason, were not counted or allowed, and all detached stubs from ballots voted, and endorse on the outside thereof "ballots voted." Each of the judges must write his name across the seal of each of said envelopes or packages. The ballot box must be returned to the county clerk.

History: Ap. p. Sec. 1408, Pol. C. 1895; amd. Sec. 6, Ch. 88, L. 1907; Sec. 580, Rev. C. 1907; re-en. Sec. 782, R. C. M. 1921; amd. Sec. 1, Ch. 112, L. 1937; amd. Sec. 1, Ch. 65, L. 1943; amd. Sec. 1, Ch. 23, L. 1945.

one copy of the poll-book. State ex rel. Lynch v. Batani et al., 103 M 353, 361, 62 P 2d 565.

References

Dubie v. Batani, 97 M 468, 478, 37 P 2d 662.

Operation and Effect

The law contemplates that the election board in the precinct will return to the clerk and recorder but one tally sheet and

Collateral References

Elections 241, 248, 249, 250.
29 C.J.S. Elections §§ 224, 230, 231.

23-1710. (784) Custody of election returns. The sealed envelope containing the check-lists, certificates of registration, poll-book, tally-sheets, oaths of election officers, also the package or envelope containing the voted ballots and detached stubs and the package or envelope containing the unused ballots, must, before the judges adjourn, be delivered to one of their number, to be determined by lot, unless otherwise agreed upon.

History: Ap. p. Sec. 1410, Pol. C. 1895; amd. Sec. 7, Ch. 88, L. 1907; Sec. 582, Rev. C. 1907; re-en. Sec. 784, R. C. M. 1921; amd. Sec. 2, Ch. 23, L. 1945. Cal. Pol. C. Sec. 1263.

Collateral References

Elections 251.
29 C.J.S. Elections § 232.

23-1711. (785) Delivery to county clerk. The judges to whom such packages are delivered must, within twenty-four hours, deliver them, without their having been opened, to the county clerk, or convey the same, unopened, to the postoffice nearest the house in which the election for such

precinct was held, and register and mail the same, duly directed to the said clerk.

History: En. Sec. 1411, Pol. C. 1895; re-en. Sec. 583, Rev. C. 1907; re-en. Sec. 785, R. C. M. 1921.

23-1712. (786) Filing of ballots and stubs by county clerk. Upon the receipt of the packages or envelopes by the county clerk, he must file the package or envelope containing the ballots voted and detached stubs and the package or envelope containing the unused ballots, and must keep them unopened and unaltered for twelve (12) months, after which time, if there is no contest commenced in some tribunal having jurisdiction about such election, he must burn such packages, or envelopes, without opening or examining their contents.

History: Ap. p. Sec. 1412, Pol. C. 1895; amd. Sec. 8, Ch. 88, L. 1907; Sec. 584, Rev. C. 1907; re-en. Sec. 786, R. C. M. 1921; amd. Sec. 3, Ch. 23, L. 1945. Cal. Pol. C. Sec. 1265.

Collateral References

Elections 255.
29 C.J.S. Elections § 234.

23-1713. (787) Keeping returns pending contest. If, within twelve months, there is such a contest commenced, he must keep the packages of envelopes unopened and unaltered until it is finally determined, when he must, as provided in the preceding section, destroy them, unless the same are by virtue of an order of the tribunal in which the contest is pending, brought and opened before it to the end that evidence may be had of their contents, in which event the packages or envelopes and their contents are in the custody of such tribunal.

History: Ap. p. Sec. 1413, Pol. C. 1895; amd. Sec. 9, Ch. 88, L. 1907; Sec. 585, Rev. C. 1907; re-en. Sec. 787, R. C. M. 1921. Cal. Pol. C. Sec. 1266.

References

Cited or applied as section 1413, Political Code, before amendment, in Lane v. Bailey, 29 M 548, 560, 75 P 191.

23-1714. (788) Disposition of returns prior to canvass of vote. The envelopes containing the check-lists, certificates of registration, poll-book, tally-sheets, and oaths of election officers must be filed by the county clerk and be kept by him, unopened and unaltered, until the board of county commissioners meet for the purpose of canvassing the returns, when he must produce them before such board, where the same shall be opened.

History: Ap. p. Sec. 1414, Pol. C. 1895; amd. Sec. 10, Ch. 88, L. 1907; Sec. 586, Rev. C. 1907; re-en. Sec. 788, R. C. M. 1921.

References

Maddox v. Board of State Canvassers, 116 M 217, 225, 149 P 2d 112.

23-1715. (789) Clerk to file in his office books, papers, etc. As soon as the returns are canvassed, the clerk must file in his office the poll-book, lists, and the papers produced before the board from the package mentioned in the next preceding section.

History: En. Sec. 1415, Pol. C. 1895; re-en. Sec. 587, Rev. C. 1907; re-en. Sec. 789, R. C. M. 1921. Cal. Pol. C. Sec. 1268.

CHAPTER 18

CANVASS OF ELECTION RETURNS—RESULTS AND CERTIFICATES

- Section 23-1801. Meeting of county commissioners to canvass returns.
 23-1802. In case of absence certain county officers to act.
 23-1803. Canvass to be postponed, when.
 23-1804. Canvass to be public.
 23-1805. Statement of the result to be entered of record.
 23-1806. Plurality to elect.
 23-1807. Duty of canvassing board—tie vote.
 23-1808. Certificates issued by the clerk.
 23-1809. Returns for joint members of house of representatives.
 23-1810. How transmitted.
 23-1811. Duty of clerk receiving such returns.
 23-1812. State returns, how made.
 23-1813. How transmitted.
 23-1814. State canvassers, composition and meeting of board.
 23-1815. Messenger may be sent for returns—his duty and compensation.
 23-1816. Governor to issue commissions.
 23-1817. Defect in form of returns to be disregarded.
 23-1818. Duty of secretary of state to print election laws.
 23-1819. Penalties.

23-1801. (790) Meeting of county commissioners to canvass returns.

The board of county commissioners of each county is ex-officio a board of county canvassers for the county, and must meet as the board of county canvassers at the usual place of meeting of the county commissioners within ten days after each election, at twelve o'clock noon, to canvass the returns.

History: En. Sec. 2, p. 299, L. 1891; amd. Sec. 1430, Pol. C. 1895; re-en. Sec. 588, Rev. C. 1907; re-en. Sec. 790, R. C. M. 1921. Cal. Pol. C. Sec. 1278.

P 942; State ex rel. Wulf v. McGrath, 111 M 96, 100, 106 P 2d 183; Maddox v. Board of State Canvassers, 116 M 217, 225, 149 P 2d 112.

References

Referred to as section 588, Revised Codes, with other sections, in State ex rel. Cryderman v. Wienrich, 54 M 390, 400, 170

Collateral References

Elections—258.
 29 C.J.S. Elections § 236.
 18 Am. Jur. 346, Elections, §§ 252 et seq.

23-1802. (791) In case of absence certain county officers to act. If, at the time and place appointed for such meeting, one or more of the county commissioners should not attend, the place of the absentees must be supplied by one or more of the following county officers, whose duty it is to act in the order named, to-wit, the treasurer, the assessor, the sheriff, so that the board of county canvassers shall always consist of three acting members. The clerk of the board of county commissioners is the clerk of the board of county canvassers.

History: Ap. p. Sec. 2, p. 299, L. 1891; amd. Sec. 1431, Pol. C. 1895; re-en. Sec. 589, Rev. C. 1907; re-en. Sec. 791, R. C. M. 1921.

Operation and Effect

The members of a county board of canvassers do not necessarily embrace the same officers, but are subject to changes which depend upon circumstances, and a writ of mandate, issued to compel such board to reconvene and canvass the returns from an election precinct which they had excluded, is properly directed to the particular individuals comprising the board, describing them by name, and as constituting the board of county can-

vassers of election returns for a certain county of the state, the particular members of such board at the time in question being the persons against whom obedience must, if necessary, be enforced. State ex rel. Leech v. Board of Canvassers, 13 M 23, 29, 31 P 879.

References

Referred to in connection with other sections in State ex rel. Cryderman v. Wienrich, 54 M 390, 400, 170 P 942.

Collateral References

Elections—257.
 29 C.J.S. Elections § 235.

23-1803. (792) Canvass to be postponed, when. If, at the time of meeting, the returns from each precinct in the county in which polls were opened have been received, the board of county canvassers must then and there proceed to canvass the returns; but if all the returns have not been received, the canvass must be postponed from day to day until all of the returns are received, or until seven postponements have been had. If the returns from any election precinct have not been received by the county clerk within seven days after any election, it is his duty forthwith to send a messenger to the judges for the missing returns, who must procure such returns from the judges, or any of them, and return the same to the county clerk. Such messenger must be paid out of the county treasury fifteen cents per mile in going and coming. If it appears to the board, by evidence, that the polls were not opened in any precinct, and no returns have been received therefrom, the board must certify to the same, and file such certificate with the county clerk, with the evidence, if any, who must enter the same in the minutes and in the statement mentioned in section 23-1805.

History: Ap. p. Sec. 3, p. 300, L. 1891; amd. Sec. 1432, Pol. C. 1895; re-en. Sec. 590, Rev. C. 1907; re-en. Sec. 792, R. C. M. 1921. Cal. Pol. C. Sec. 1280.

References

Referred to as section 590, Revised Codes, with other sections, in State ex rel. Cryderman v. Wienrich, 54 M 390, 400, 170 P 942.

23-1804. (793) Canvass to be public. The canvass must be made in public by opening the returns and determining therefrom the vote of such county or precinct for each person voted for, and for and against each proposition voted upon at such election, and declaring the result thereof. In canvassing, no returns must be rejected if it can be ascertained therefrom the number of votes cast for each person. The fact that the returns do not show who administered the oath to the judges or clerks of election, or a failure to fill out all the certificates in the poll-books, or to do or perform any other act in making up the returns, that is not essential to determine for whom the votes were cast, is not such an irregularity as to entitle the board to reject the same, but they must be canvassed as other returns are.

History: En. Secs. 4 and 5, p. 301, L. 1891; re-en. Sec. 1433, Pol. C. 1895; re-en. Sec. 591, Rev. C. 1907; re-en. Sec. 793, R. C. M. 1921. Cal. Pol. C. Sec. 1281.

Operation and Effect

A county board of canvassers has no authority to inquire into the validity of a certificate of nomination of a nominee for office, and therefore, where the election returns are genuine and properly certified, prohibition will not lie to restrain the board from canvassing such returns and counting the vote cast for such person, as required by sections 4 and 6, pages 301, 302, laws of the second session, upon the ground that the nomination was invalid. *Pigott v. Canvassers of Cascade County*, 12 M 537, 538, 31 P 536.

The duties of a county canvassing board are ministerial, and such board has no authority to exclude the returns of an

election precinct, regularly made, upon the ground that the voting was shown by affidavits to be illegal, and, having done so, may be compelled by mandamus to canvass such returns. *State ex rel. Leech v. Board of Canvassers*, 13 M 23, 30, 31 P 879. See also *State ex rel. Breen v. Toole*, 32 M 4, 10, 79 P 403; *Poe v. Sheridan County*, 52 M 279, 288, 157 P 185.

Where a county canvassing board issued a certificate of election to a candidate for the legislative assembly after unlawfully excluding the returns of a particular precinct, and then adjourned sine die, such board may be compelled by mandamus to reconvene and canvass the returns so excluded, and issue a certificate of election to the person shown by a complete canvass to be entitled thereto. *State ex rel. Leech v. Board of Canvassers*, 13 M 23, 31, 31 P 879.

Id. Returns in the poll-book being left blank, and the certificate thereto not be-

ing properly filled in, are not grounds for rejecting returns, nor are they such irregularities as will entitle a board of canvassers to reject them.

Id. It is the duty of the board of canvassers to procure the check-lists and surrendered lists before rejecting the vote of a precinct as returned by the poll-books alone.

References

Cited or applied as section 591, Revised Codes, in *Stephens v. Nacey*, 47 M 479, 485, 133 P 361.

Collateral References

Elections↔259.
29 C.J.S. Elections § 237.

23-1805. (794) Statement of the result to be entered of record. The clerk of the board must, as soon as the result is declared, enter on the records of such board a statement of such result, which statement must show:

1. The whole number of votes cast in the county.
2. The names of the persons voted for and the propositions voted upon.
3. The office to fill which each person was voted for.
4. The number of votes given at each precinct to each of such persons, and for and against each of such propositions.
5. The number of votes given in the county to each of such persons, and for and against each of such propositions.

History: En. Sec. 6, p. 301, L. 1891; re-en. Sec. 1434, Pol. C. 1895; re-en. Sec. 592, Rev. C. 1907; re-en. Sec. 794, R. C. M. 1921. Cal. Pol. C. Sec. 1282.

Collateral References

Elections↔259.
29 C.J.S. Elections § 237.

23-1806. (795) Plurality to elect. The person receiving at any election the highest number of votes for any office to be filled at such election is elected thereto.

History: En. Sec. 1170, Pol. C. 1895; re-en. Sec. 456, Rev. C. 1907; re-en. Sec. 795, R. C. M. 1921. Cal. Pol. C. Sec. 1066.

Where Deceased Candidate Received Majority of Votes, Highest Write-in Candidate Held Elected

Where a candidate for re-election to a county office died 24 days before election, his death known generally to electors, but his name placed on ballot and majority voted for him supposing to retain his widow, appointed to fill the vacancy, until the next general election, a write-in candi-

date whom they intended to defeat, receiving the highest vote cast for any living person, held, on his application for writ of mandate to compel the county canvassing board to reconvene and cause certificate of election issued to him, that write-in candidate elected and entitled to the office. *State ex rel. Wolff v. Guerkink*, 111 M 417, 426, 109 P 2d 1094.

Collateral References

Elections↔237.
29 C.J.S. Elections § 241.

23-1807. (796) Duty of canvassing board—tie vote. The board must declare elected the person having the highest number of votes given for each office to be filled by the votes of a single county or a subdivision thereof, and in the event of two or more persons receiving an equal and sufficient number of votes to elect to the office of state senator, or member of the house of representatives, it shall be the duty of the board, under the direction of and in the presence of the district court, or judge thereof, to recount the ballots cast for such persons, and the board shall declare elected the person or persons shown by the recount to have the highest number of votes. If such recount shall show that two or more such persons receive an equal and sufficient number of votes to elect to the same office, then, and in that event, the board shall certify such facts to the governor.

History: En. Sec. 6, p. 302, L. 1891; re-en. Sec. 1435, Pol. C. 1895; re-en. Sec. 593, Rev. C. 1907; amd. Sec. 1, Ch. 84, L. 1909; re-en. Sec. 796, R. C. M. 1921.

Collateral References
Elections⇨259, 260.
29 C.J.S. Elections § 237.

23-1808. (797) Certificates issued by the clerk. The clerk of the board of county commissioners must immediately make out and deliver to such person (except to the person elected district judge) a certificate of election signed by him and authenticated with the seal of the board of county commissioners.

History: En. Sec. 7, p. 302, L. 1891; re-en. Sec. 1436, Pol. C. 1895; re-en. Sec. 594, Rev. C. 1907; re-en. Sec. 797, R. C. M. 1921. Cal. Pol. C. Sec. 1284.

Cross-Reference

County clerk to issue certificate of election, sec. 16-1157.

References

State ex rel. Wallace v. Callow, 78 M 308, 315, 254 P 187; State ex rel. Riley v. District Court et al., 103 M 576, 581, 64 P 2d 115.

Collateral References

Elections⇨265.
29 C.J.S. Elections § 240.

23-1809. (798) Returns for joint members of house of representatives. When there are members of the house of representatives voted for by the electors of a district composed of two or more counties, each of the clerks of the counties composing such district, immediately after making out the statement specified in section 23-1805, must make a certified abstract of so much thereof as relates to the election of such officers.

History: En. Sec. 8, p. 302, L. 1891; re-en. Sec. 1437, Pol. C. 1895; re-en. Sec. 595, Rev. C. 1907; re-en. Sec. 798, R. C. M. 1921.

Collateral References

Elections⇨248.
29 C.J.S. Elections § 230.

23-1810. (799) How transmitted. The clerk must seal up such abstract, indorse it "Election Returns," and without delay transmit the same by mail to the clerk of the board of commissioners of the county which stands first in alphabetical arrangement in the list of counties composing such district.

History: En. Sec. 1438, Pol. C. 1895; re-en. Sec. 596, Rev. C. 1907; re-en. Sec. 799, R. C. M. 1921. Cal. Pol. C. Sec. 1286.

Collateral References

Elections⇨251.
29 C.J.S. Elections § 232.

23-1811. (800) Duty of clerk receiving such returns. The clerk to whom the returns of a district are made must, on the twentieth day after such election, or sooner, if the returns from all the counties in the district have been received, open in public such returns; and from them and the statement of the vote for such officers in his own county:

1. Make a statement of the vote of the district for such officers, and file the same, together with the returns, in his office.
2. Transmit a certified copy of such statement to the secretary of state.
3. Make out and deliver or transmit by mail to the persons elected a certificate of election (unless it is by law otherwise provided).

History: Ap. p. Sec. 9, p. 303, L. 1891; amd. Sec. 1439, Pol. C. 1895; re-en. Sec. 597, Rev. C. 1907; re-en. Sec. 800, R. C. M. 1921. Cal. Pol. C. Sec. 1287.

Collateral References

Elections⇨247, 265.
29 C.J.S. Elections §§ 229, 240.

23-1812. (801) State returns, how made. When there has been a general or special election for officers voted for by the electors of the state at

large or for judicial officers (except justices of the peace), each clerk of the board of county canvassers, so soon as the statement of the vote of his county is made out and entered upon the records of the board of county commissioners, must make a certified abstract of so much thereof as relates to the votes given for persons for said offices to be filled at such election.

History: En. Sec. 10, p. 303, L. 1891; amd. Sec. 1440, Pol. C. 1895; re-en. Sec. 598, Rev. C. 1907; re-en. Sec. 801, R. C. M. 1921. Cal. Pol. C. Sec. 1288.

Statutes In Pari Materia With Others

This section and those following relating to canvassers' abstract to secretary of state, and sections 23-2301 et seq. authorizing recount of votes, etc., are in *pari materia* and must be construed together,

both the county and state board of canvassers being governed by the former provisions in case the result of the election is changed upon a recount. *State ex rel. Riley v. District Court*, 103 M 576, 583, 64 P 2d 115.

Collateral References

Elections↪247.
29 C.J.S. Elections § 229.

23-1813. (802) How transmitted. The clerk must seal up such abstract, indorse it "Election Returns," and without delay transmit it by mail, registered, to the secretary of state.

History: En. Sec. 11, p. 303, L. 1891; re-en. Sec. 1441, Pol. C. 1895; re-en. Sec. 599, Rev. C. 1907; re-en. Sec. 802, R. C. M. 1921. Cal. Pol. C. Sec. 1289.

Collateral References

Elections↪251.
29 C.J.S. Elections § 232.

23-1814. (803) State canvassers, composition and meeting of board. Within thirty [30] days after the election and sooner if the returns be all received, the state auditor, state treasurer, and attorney-general, who constitute a board of state canvassers, must meet in the office of the secretary of state and compute and determine the vote, and the secretary of state, who is secretary of said board, must make out and file in his office a statement thereof and transmit a copy of such statement to the governor.

History: En. Sec. 14, p. 304, L. 1891; amd. Sec. 1442, Pol. C. 1895; re-en. Sec. 600, Rev. C. 1907; re-en. Sec. 803, R. C. M. 1921; amd. Sec. 1, Ch. 55, L. 1949. Cal. Pol. C. Sec. 1290.

Collateral References

Elections↪258, 259.
29 C.J.S. Elections §§ 236, 237.

23-1815. (804) Messenger may be sent for returns—his duty and compensation. If the returns from all the counties have not been received on the fifth day before the day designated for the meeting of the board of state canvassers, the secretary of state must forthwith send a messenger to the clerk of the board of county canvassers of the delinquent county, and such clerk must furnish the messenger with a certified copy of the statement mentioned in section 23-1805. The person appointed is entitled to receive as compensation five dollars per day for the time necessarily consumed in such service, and the traveling expenses necessarily incurred. His account therefor, certified by the secretary of state, after being allowed by the board of examiners, must be paid out of the general fund of the state treasury.

History: Ap. p. Secs. 12 and 13, L. 1891; amd. Sec. 1443, Pol. C. 1895; re-en. Sec. 601, Rev. C. 1907; re-en. Sec. 804, R. C. M. 1921.

Collateral References

Elections↪252
29 C.J.S. Elections § 229.

23-1816. (805) Governor to issue commissions. Upon receipt of such copy mentioned in section 23-1814, the governor must issue commissions to

the persons who from it appear to have received the highest number of votes for offices to be filled at such election. In case a governor has been elected to succeed himself, the secretary of state must issue the commission.

History: En. Sec. 15, p. 304, L. 1891; amd. Sec. 1444, Pol. C. 1895; re-en. Sec. 602, Rev. C. 1907; re-en. Sec. 805, R. C. M. 1921. Cal. Pol. C. Sec. 1291.

Collateral References
States↔48.
81 C.J.S. States § 76.

23-1817. (806) Defect in form of returns to be disregarded. No declaration of the result, commission, or certificate must be withheld on account of any defect or informality in the return of any election, if it can with reasonable certainty be ascertained from such return what office is intended and who is elected thereto.

History: En. Sec. 17, p. 305, L. 1891; re-en. Sec. 1448, Pol. C. 1895; re-en. Sec. 606, Rev. C. 1907; re-en. Sec. 806, R. C. M. 1921. Cal. Pol. C. Sec. 1297.

Codes, in *Stephens v. Nacey*, 47 M 479, 485, 133 P 361.

Collateral References

Elections↔257, 265; States↔48.
29 C.J.S. Elections §§ 235, 240; 81 C.J.S. States § 76.

References

Cited or applied as section 606, Revised

23-1818. (807) Duty of secretary of state to print election laws. It is the duty of the secretary of state to cause to be published, in pamphlet form, a sufficient number of copies of election laws and such other provisions of law as bear upon the subject of elections, and to transmit the proper number to each county clerk, whose duty it is to furnish each election officer in his county with one of such copies.

History: En. Sec. 18, p. 305, L. 1891; re-en. Sec. 1449, Pol. C. 1895; re-en. Sec. 607, Rev. C. 1907; re-en. Sec. 807, R. C. M. 1921.

23-1819. (808) Penalties. The penalties for the violation of election laws are prescribed in sections 94-1401 to 94-1474.

History: En. Sec. 1450, Pol. C. 1895; re-en. Sec. 608, Rev. C. 1907; re-en. Sec. 808, R. C. M. 1921.

Collateral References

Elections↔309 et seq.
29 C.J.S. Elections §§ 324, 334.

CHAPTER 19

FAILURE OF ELECTIONS—PROCEEDINGS ON TIE VOTE

Section 23-1901. Tie vote on representative in congress.

23-1902. Proceedings on tie vote.

23-1903. Tie vote on state officers.

23-1904. Tie vote on judicial officers.

23-1901. (809) Tie vote on representative in congress. In case of a failure, by reason of a tie vote or otherwise, to elect a representative in congress, the secretary of state must transmit to the governor a certified statement showing the vote cast for such persons voted for, and in case of a failure to elect, by reason of a tie vote or otherwise, the governor must order a special election.

History: En. Sec. 16, p. 305, L. 1891; re-en. Sec. 1447, Pol. C. 1895; re-en. Sec. 605, Rev. C. 1907; re-en. Sec. 809, R. C. M. 1921.

Collateral References

Elections↔238.
29 C.J.S. Elections § 244.

23-1902. (810) Proceedings on tie vote. In case any two or more persons have an equal and highest number of votes for either governor,

lieutenant-governor, secretary of state, attorney general, state auditor, state treasurer, clerk of the supreme court, superintendent of public instruction, or any other state executive officer, the legislative assembly, at its next regular session, must forthwith, by joint ballot of the two houses, elect one of such persons to fill such office; and in case of a tie vote for clerk of the district court, county attorney, or for any county officer except county commissioner, and for any township officer, the board of county commissioners must appoint some eligible person, as in case of other vacancies in such offices; and in case of a tie vote for county commissioner, the district judge of the county must appoint an eligible person to fill the office, as in other cases of vacancy.

History: En. Sec. 1171, Pol. C. 1895; re-en. Sec. 457, Rev. C. 1907; re-en. Sec. 810, R. C. M. 1921. Cal. Pol. C. Secs. 1067-1068.

Operation and Effect

This section does not in terms declare that a vacancy in office shall occur when there has been no election to the office by reason of a tie vote. Insofar as it relates to officers named in the constitution and the authority of the county commissioners to fill vacancies therein, it is invalid. State ex rel. Chenoweth v. Acton, 31 M 37, 40, 77 P 299. See State ex rel. Jones v. Foster, 39 M 583, 591, 104 P 860.

If there is a clause in the constitution providing that an officer shall hold for a definite term and until his successor is elected and qualified, and the people fail to elect his successor, there is no vacancy, and he is entitled to hold over until the people have chosen his successor in the usual way; but, in the case of judicial officers, whose terms end at the expiration of a definitely fixed period, the words

"and until his successor is elected and qualified," refer to those officers only who were first elected after the adoption of the constitution; they have no application to those chosen after such first election. State ex rel. Jones v. Foster, 39 M 583, 586, 104 P 860.

The provisions of the constitution, fixing the terms of judicial officers, are exclusive, and vacancies occur by operation of law upon the expiration of the terms designated, even where the people fail to elect their successors; hence, if, by reason of a tie vote, there is a failure to elect the successor of a clerk of a district court upon the expiration of the incumbent's term, there is a vacancy which the county commissioners are authorized, under this section, to fill by appointment. State ex rel. Jones v. Foster, 39 M 583, 592, 104 P 860. See also State ex rel. Patterson v. Lentz, 50 M 322, 336, 146 P 932.

Collateral References

18 Am. Jur. 339, Elections, §§ 240 et seq.

23-1903. (811) Tie vote on state officers. In case of a tie vote for state officers, as specified in the preceding section, it is the duty of the secretary of state to transmit to the legislative assembly, at its next regular session, a certified copy of the statement showing the vote cast for the two or more persons having an equal and the highest number of votes for any state office.

History: En. Sec. 1445, Pol. C. 1895; re-en. Sec. 603, Rev. C. 1907; re-en. Sec. 811, R. C. M. 1921.

23-1904. (812) Tie vote on judicial officers. In case any two or more persons have an equal and highest number of votes for justice of the supreme court, or judge of a district court, the secretary of state must transmit to the governor a certified statement showing the vote cast for such person, and thereupon the governor must appoint an eligible person to hold office as in case of other vacancies in such offices.

History: En. Sec. 1446, Pol. C. 1895; re-en. Sec. 604, Rev. C. 1907; re-en. Sec. 812, R. C. M. 1921.

Collateral References

Elections—238; Judges—8.
29 C.J.S. Elections § 244; 48 C.J.S. Judges § 32.

CHAPTER 20

NONPARTISAN NOMINATION AND ELECTION OF JUDGES OF
SUPREME COURT AND DISTRICT COURTS

- Section** 23-2001. Nomination and election of district court and supreme court judges.
 23-2002. Nominations.
 23-2003. Petition for nomination—contents—form—filing—fees.
 23-2004. Register of candidates for nomination.
 23-2005. Arrangement and certification of judicial candidates—separate from party designation.
 23-2006. Primary ballots—preparation and distribution.
 23-2007. Judicial primary ballots—voting.
 23-2008. Separate counting and canvassing of judicial ballots—application of general laws.
 23-2009. Nominations—placing names on ballots.
 23-2010. Tie vote, how decided.
 23-2011. Vacancies among nominees after nomination and before general election, how filled.
 23-2012. Unlawful for political party to endorse judicial candidate.
 23-2013. Arrangement of judicial ballot when voting machine used.
 23-2014. Repealing clause—application of general laws.

23-2001. (812.1) Nomination and election of district court and supreme court judges. That hereafter all candidates for the office of justice of the supreme court of the state of Montana or judge of the district court in any judicial district of the state of Montana, shall be nominated and elected in accordance with the provisions of this act and in no other manner.

History: En. Sec. 1, Ch. 182, L. 1935.

Purpose of Nonpartisan Judiciary Act

The purpose of the nonpartisan judiciary act, sections 23-2001 to 23-2014 is to eliminate, so far as possible, the selection of judges from partisan politics, and the phrase found in this section, declaring that candidates for judicial office "shall be nominated and elected in accordance with the provisions of this act and in no other manner," held, intended merely to exclude the selection of judges on a party ticket.

The word "candidate" as used in this act should not receive a different construction from that as used in the general primary law. The act must be construed in pari materia with the primary and general election laws. State ex rel. McHale v. Ayers, 111 M 1, 3, 105 P 2d 686.

Collateral References

Judges ⇨ 3.

48 C.J.S. Judges § 12.

18 Am. Jur. 256, Elections, §§ 118 et seq.

23-2002. (812.2) Nominations. Candidates for any office within the provisions of this act, to be filled at any election to be held in the state of Montana, shall be nominated in the manner herein provided at the regular primary nominating election provided by law for the nomination of other candidates for other offices to be filled at such election, and all laws relating to such primaries shall continue to be in force and to be applicable to the said offices in so far as may be consistent with the provisions of this act.

History: En. Sec. 2, Ch. 182, L. 1935.

References

State ex rel. McHale v. Ayers, 111 M 1, 4, 105 P 2d 686.

23-2003. (812.3) Petition for nomination—contents—form—filing—fees. All persons who shall desire to become candidates for nomination to any office within the provisions of this act shall prepare, sign and file petitions for nomination in compliance with the requirements of the primary election laws, which petition for nomination shall be substantially in the following form: To (Name and title of officer with whom the petition is to be filed), and to the electors of the

(state or counties of comprising the district or county as the case may be) in the state of Montana:

I,, reside at, and my postoffice address is I am a candidate on the nonpartisan judicial ticket for the nomination for the office of at the primary nominating election to be held in the (state of Montana or district or county), on the day of, 19....., and if I am nominated as a candidate for such office I will accept the nomination and will not withdraw, and if I am elected, I will qualify as such officer.

Provided, however, that no such petition for judicial office shall indicate the political party or political affiliations of the candidate, and provided further that no candidate for judicial office may in his petition for nomination state any measures or principles he advocates, or have any statement of measure or principles which he advocates, or any slogans, after his name on the nominating ballot as permitted by section 23-911.

Each person so filing a petition for nomination shall pay or remit therewith the fee prescribed by law for the filing of such a petition for the particular judicial position for which he aspires for nomination. All such petitions for justices of the supreme court and judges of the several district courts of the state shall be filed with the secretary of state.

History: En. Sec. 3, Ch. 182, L. 1935.

References

State ex rel. McHale v. Ayers, 111 M 1, 3, 105 P 2d 686.

Collateral References

Elections 126(1).
29 C.J.S. Elections §§ 91, 111, 131.

23-2004. (812.4) Register of candidates for nomination. On receipt of each of such petitions the secretary of state shall make corresponding entries in the "Register of Candidates for Nomination" as now provided by law, but on a page or pages of such register apart from entries made with reference to the district candidates of political parties.

History: En. Sec. 4, Ch. 182, L. 1935.

23-2005. (812.5) Arrangement and certification of judicial candidates—separate from party designation. At the same time and in the same manner as by law he is required to arrange and certify the names of candidates for other state offices the secretary of state shall separately arrange and certify and file as required by law, the names of all candidates for judicial office, certifying to each county clerk of the state the names of all candidates for judicial office entitled to appear on the primary ballot in his county, with all other information required by law to appear upon the ballot, which lists of judicial candidates shall be made upon separate sheets of paper from the lists of candidates to appear under party or political headings.

History: En. Sec. 5, Ch. 182, L. 1935.

Collateral References

Elections 126(5).
29 C.J.S. Elections § 118.

23-2006. (812.6) Primary ballots—preparation and distribution. At the same time and in the same manner as he is by law required to prepare the primary election ballots for the several political parties, the county clerk of

each county shall arrange, prepare and distribute official primary ballots for judicial offices which shall be known and designated and entitled "Judicial Primary Ballots," which shall be arranged as are other primary ballots, except that the name of no political party shall appear thereon. The same number of official judicial primary ballots and sample ballots shall be furnished for each election precinct, as in the case of other primary election ballots.

History: En. Sec. 6, Ch. 182, L. 1935.

References

State ex rel. McHale v. Ayers, 111 M 1, 4, 105 P 2d 686.

23-2007. (812.7) Judicial primary ballots—voting. Each elector having the right to vote at a primary election shall be furnished with a separate "Judicial Primary Ballot" at the same time and in the same manner as he or she is furnished with other ballots provided by law and each elector, without regard to political party, may mark such "Judicial Primary Ballot" for one or more persons of his choice for judicial nominations, depending on the number to be nominated and elected, which shall be deposited in the general ballot box provided. The official number of such judicial primary ballot so delivered and voted shall correspond to the official number of the regular ballot of the elector. Every elector shall be entitled to vote, without regard to politics, for one or more persons of his choice for nomination for judicial office, depending on the number of places to be filled at the succeeding general election. Different terms of office for the same position shall be considered as separate offices.

History: En. Sec. 7, Ch. 182, L. 1935.

Electors May Write in Names of Candidates

Held, on application to enjoin the governor from issuing a certificate of nomination to a candidate for district judge, that the nonpartisan judiciary act does not restrict electors to the privilege of voting only for candidates whose names appear on the primary judicial ballot, but that, though the act is silent as to their right to write in the name of a qualified person

to judicial office, they may do so under the act, in view of the provisions of sections 23-2002, 23-2006 and 23-2014, when construed in *pari materia* with the laws relating to primary and general elections, citing sections 23-910 and 23-2009. State ex rel. McHale v. Ayers, 111 M 1, 3, 105 P 2d 686.

Collateral References

Elections—126(6).

29 C.J.S. Elections § 118.

23-2008. (812.8) Separate counting and canvassing of judicial ballots—application of general laws. After the closing of the polls at a primary election, the election officers shall separately count and canvass the judicial primary ballots and make record thereof, and certify to the same, showing the number of votes cast for each person upon the judicial primary ballot, in addition to certifying the party vote or other matters voted upon as required by law. Judicial ballots, their stubs, and unused ballots, shall be disposed of in the same manner as other ballots, stubs and unused ballots, and all returns made in the same manner now provided by law.

History: En. Sec. 8, Ch. 182, L. 1935.

Collateral References

Elections—126(7).

29 C.J.S. Elections § 119.

23-2009. (812.9) Nominations—placing names on ballots. The candidates for nomination at any primary election for any office within the provisions of this act, to be filled at the succeeding general election, equal

in number to twice the number to be elected at the succeeding general election, who shall have received at any such primary election the highest number of votes cast for nomination to the office for which they are candidates (or if the number of all of the candidates voted for as aforesaid be not more than twice the number to be elected, then all the candidates) shall be the nominees for such office; and their names, and none other, except as hereinafter provided, shall be printed as candidates for such respective offices upon the official ballots which are provided according to law for use at such succeeding primary or general election; provided that no candidate shall be entitled to have his name placed on the judicial ballot at the general election, in any form, unless he shall have been a successful candidate at the primary election.

History: En. Sec. 9, Ch. 182, L. 1935.

References

State ex rel. McHale v. Ayers, 111 M 1, 4, 105 P 2d 686.

Collateral References

Elections 172.
29 C.J.S. Elections § 161.

23-2010. (812.10) Tie vote, how decided. In case of a tie vote, candidates receiving tie vote for justice of the supreme court or judge of the district courts shall appear and cast lots before the secretary of state on the fifth day after such vote is officially canvassed. In case any such candidate or candidates shall fail to appear either in person or by proxy in writing, before twelve o'clock noon of the day appointed, the secretary of state shall by lot determine the candidate whose name will be certified for the general election and printed on the official ballot.

History: En. Sec. 10, Ch. 182, L. 1935.

Collateral References

Elections 238.
29 C.J.S. Elections § 244.

23-2011. (812.11) Vacancies among nominees after nomination and before general election, how filled. If after any primary election, and before the succeeding general election, any candidate nominated pursuant to the provisions of this act, shall die or by virtue of any present or future law become disqualified from or disentitled to have his name printed on the ballot for the election, a vacancy shall be deemed to exist which shall be filled by the otherwise unnominated and not disentitled candidate for the same office next in rank with respect to the number of votes received in such primary election. If after the primary, and before the general election, there should not be any candidate nominated and living and entitled to have his name printed on the ballot for any office which is within the provisions of this act, or not enough of such candidates to equal the number of persons to be elected to such office, then the governor in the case of justices of the supreme court and judges of the district courts is authorized and empowered to certify to the secretary of state the names of persons qualified for such office or offices equal in number to twice the number to be elected at the general election, and the names of the persons so nominated shall thereupon be printed on the official ballot in the same manner as though regularly nominated at the judicial primary election. Nominations so made by the governor to fill a vacancy shall not be deemed filed too late if filed within ten days after the vacancy occurs, and in case the ballots for the election

have already been printed, stickers may be used to place the names of such candidates upon the ballot.

History: En. Sec. 11, Ch. 182, L. 1935.

23-2012. (812.13) Unlawful for political party to endorse judicial candidate. It shall be unlawful for any political party to endorse any candidate for the office of justice of the supreme court or judge of a district court, and anyone who in any way participates in such endorsement by any political party, or who purports to act on behalf of any political party in endorsing any candidate, shall be guilty of a misdemeanor.

History: En. Sec. 13, Ch. 182, L. 1935.

Collateral References

Judges 3.

48 C.J.S. Judges § 12.

23-2013. (812.14) Arrangement of judicial ballot when voting machine used. In all counties of the state where voting machines are now, or may hereafter be used in any elections, it shall be the duty of the clerk and recorder to arrange the judicial ballot in both the primary and general elections in the vertical column or horizontal row or space, immediately following the column, row or space assigned the first major political party and immediately preceding the column, row or space assigned the second major political party.

History: En. Sec. 14, Ch. 182, L. 1935.

Collateral References.

Elections 222.

29 C.J.S. Elections § 203.

23-2014. (812.15) Repealing clause—application of general laws. All acts and parts of acts in conflict herewith are hereby repealed, and all laws pertaining to elections, both primary and general, and to special elections, not in conflict herewith are hereby declared applicable to the nomination and election of the officers herein referred to.

History: En. Sec. 15, Ch. 182, L. 1935.

References

State ex rel. McHale v. Ayers, 111 M
1, 4, 105 P 2d 686.

CHAPTER 21

PRESIDENTIAL ELECTORS, HOW CHOSEN—DUTIES

- Section 23-2101. Electors, when chosen.
 23-2102. Returns, how made.
 23-2103. Duty of governor.
 23-2104. Meeting of electors.
 23-2105. Vacancies, how supplied.
 23-2106. Voting of electors.
 23-2107. Separate ballots for president and vice-president.
 23-2108. Must make list of persons voted for.
 23-2109. Result to be transmitted as provided by law of the United States.
 23-2110. Compensation of electors.
 23-2111. How audited and paid.

23-2101. (813) Electors, when chosen. At the general election in November, preceding the time fixed by the law of the United States for the choice of president and vice-president of the United States, there must be elected as many electors of president and vice-president as this state is

entitled to appoint. The names of the presidential electors shall appear on the ballot and in addition thereto, preceding them, shall appear the names of the presidential and vice-presidential candidates in their respective party designated columns. No square shall appear in front of the names of the presidential electors instead of which there shall be one square in front of the names of the presidential and vice-presidential candidates. The ballot shall also have the following direction printed thereon: "To vote for the presidential electors of any party, the voter shall place a cross in the square before the names of the candidates for president and vice-president of said party." The number of votes received by presidential and vice-presidential candidates shall, within the meaning of this act, be the number of votes to be credited to each of the electors representing them.

History: En. Sec. 1, p. 173, L. 1891; re-en. Sec. 1460, Pol. C. 1895; re-en. Sec. 626, Rev. C. 1907; re-en. Sec. 813, R. C. M. 1921; amd. Sec. 1, Ch. 4, L. 1933. Cal. Pol. C. Sec. 1307.

Collateral References

United States \Rightarrow 25.
65 C.J. United States § 30.
18 Am. Jur. 201, Elections, §§ 31 et seq.

23-2102. (814) Returns, how made. The votes for electors of president and vice-president must be canvassed, certified to, and returned in the same manner as the votes for state officers.

History: En. Sec. 2, p. 173, L. 1891; re-en. Sec. 1461, Pol. C. 1895; re-en. Sec. 627, Rev. C. 1907; re-en. Sec. 814, R. C. M. 1921. Cal. Pol. C. Sec. 1308.

Collateral References

Elections \Rightarrow 247, 257, 265.
29 C.J.S. Elections §§ 229, 235, 240.

23-2103. (815) Duty of governor. The governor must transmit to each of the electors a certificate of election, and on or before the day of their meeting deliver to each of the electors a list of the names of electors, and must do all other things required of him in the premises by any act of Congress in force at the time.

History: En. Sec. 3, p. 174, L. 1891; re-en. Sec. 1462, Pol. C. 1895; re-en. Sec. 628, Rev. C. 1907; re-en. Sec. 815, R. C. M. 1921. Cal. Pol. C. Sec. 1314.

Collateral References

Elections \Rightarrow 265; United States \Rightarrow 25.
29 C.J.S. Elections § 240; 65 C.J. United States § 30.

23-2104. (816) Meeting of electors. The electors must assemble at the seat of government the first Monday after the second Wednesday in December next following their election, at two o'clock in the afternoon.

History: En. Sec. 4, p. 174, L. 1891; re-en. Sec. 1463, Pol. C. 1895; re-en. Sec. 629, Rev. C. 1907; re-en. Sec. 816, R. C. M. 1921; amd. Sec. 1, Ch. 15, L. 1933; amd. Sec. 1, Ch. 33, L. 1935. Cal. Pol. C. Sec. 1315.

Act Extending Time for Depositing Military Ballots Unconstitutional in Part

Since both under this section and the federal act (sec. 5, title 3, U.S.C. enacted pursuant to sec. 1, art. II, U. S. Constitution) the presidential electors must meet on the first Monday after the second

Wednesday in December following their election, the legislature could not, by enacting ch. 101, Laws 1943 (since repealed), constitutionally extend the time for depositing military ballots for the general election for seven weeks beyond the Tuesday after the first Monday in November. *Maddox v. Board of State Canvassers*, 116 M 217, 224, 149 P 2d 112.

Collateral References

United States \Rightarrow 25.
65 C.J. United States § 30.

23-2105. (817) Vacancies, how supplied. In case of the death or absence of any elector chosen, or in case the number of electors from any cause

be deficient, the electors then present must elect, from the citizens of the state, so many persons as will supply such deficiency.

History: En. Sec. 5, p. 174, L. 1891; 630, Rev. C. 1907; re-en. Sec. 817, R. C. M. re-en. Sec. 1464, Pol. C. 1895; re-en. Sec. 1921. Cal. Pol. C. Sec. 1316.

23-2106. (818) Voting of electors. The electors, when convened, must vote by ballot for one person for president and one for vice-president of the United States, one of whom at least is not an inhabitant of this state.

History: En. Sec. 1465, Pol. C. 1895; re-en. Sec. 631, Rev. C. 1907; re-en. Sec. 818, R. C. M. 1921. Cal. Pol. C. Sec. 1317.

23-2107. (819) Separate ballots for president and vice-president. They must name in their ballots the persons voted for as president, and in distinct ballots the persons voted for as vice-president.

History: En. Sec. 1466, Pol. C. 1895; re-en. Sec. 632, Rev. C. 1907; re-en. Sec. 819, R. C. M. 1921. Cal. Pol. C. Sec. 1318.

23-2108. (820) Must make list of persons voted for. They must make distinct lists of all persons voted for as president, and of all persons voted for as vice-president, and of the number of votes given for each.

History: En. Sec. 1467, Pol. C. 1895; re-en. Sec. 633, Rev. C. 1907; re-en. Sec. 820, R. C. M. 1921. Cal. Pol. C. Sec. 1319.

23-2109. (821) Result to be transmitted as provided by law of the United States. They must certify, seal up, and transmit such lists in the manner prescribed by the constitution and laws of the United States.

History: En. Sec. 1468, Pol. C. 1895; re-en. Sec. 634, Rev. C. 1907; re-en. Sec. 821, R. C. M. 1921. Cal. Pol. C. Sec. 1320.

23-2110. (822) Compensation of electors. Electors receive the same pay and mileage as is allowed to members of the legislative assembly.

History: En. Sec. 7, p. 174, L. 1891; re- Rev. C. 1907; re-en. Sec. 822, R. C. M. en. Sec. 1469, Pol. C. 1895; re-en. Sec. 635, 1921. Cal. Pol. C. Sec. 1321.

23-2111. (823) How audited and paid. Their accounts therefor, certified by the secretary of the state, must be audited by the state auditor, who must draw his warrants for the same on the treasurer, payable out of the general fund.

History: En. Sec. 1470, Pol. C. 1895; re-en. Sec. 636, Rev. C. 1907; re-en. Sec. 823, R. C. M. 1921. Cal. Pol. C. Sec. 1322.

Collateral References

States \Rightarrow 126, 169.
81 C.J.S. States §§ 158, 194.

CHAPTER 22

MEMBERS OF CONGRESS—ELECTIONS AND VACANCIES

- Section 23-2201. Election of United States senators—for full term and to fill vacancies.
23-2202. Writs of election to fill vacancy.
23-2203. When held.
23-2204. Returns, how made.
23-2205. Certificates issued by governor.

23-2201. (824) Election of United States senators—for full term and to fill vacancies. The election of senators in Congress of the United States

for full terms must be held on the first Tuesday after the first Monday in November next preceding the commencement of the term to be filled; and the elections of senators in Congress of the United States to fill vacancies therein must be held at the time of the next succeeding general state election following the occurrence of such vacancy; if any election therefor be invalid or not held at such time, then the same shall be held at the second succeeding general state election. Nominations of candidates and elections to the office shall be made in the same manner as is provided by law in case of governor.

History: En. Sec. 1480, Pol. C. 1895; re-en. Sec. 637, Rev. C. 1907; amd. Sec. 1, Ch. 126, L. 1915; amd. Sec. 1, Ch. 134, L. 1917; re-en. Sec. 824, R. C. M. 1921.

Collateral References
United States 11.
65 C.J. United States § 11.

23-2202. (825) Writs of election to fill vacancy. When a vacancy happens in the office of one or more senators from the state of Montana in the Congress of the United States, the governor of this state shall issue, under the seal of the state, a writ or writs of election, to be held at the next succeeding general state election, to fill such vacancy or vacancies by vote of the electors of the state; provided, however, that the governor shall have power to make temporary appointments to fill such vacancy or vacancies until the electors shall have filled them.

History: En. Sec. 1481, Pol. C. 1895; re-en. Sec. 638, Rev. C. 1907; amd. Sec. 2, Ch. 126, L. 1915; re-en. Sec. 825, R. C. M. 1921.

References
Bottomly v. Ford, 117 M 160, 163, 157 P 2d 108.

23-2203. (826) When held. At the general election to be held in the year eighteen hundred and ninety-two, and at the general election every two years thereafter, there must be elected for each congressional district one representative to the Congress of the United States.

History: En. Sec. 2, p. 306, L. 1891; re-en. Sec. 1490, Pol. C. 1895; re-en. Sec. 639, Rev. C. 1907; re-en. Sec. 826, R. C. M. 1921. Cal. Pol. C. Sec. 1343.

23-2204. (827) Returns, how made. The vote for representative in Congress must be canvassed, certified to, and transmitted in the same manner as the vote for state officers.

History: En. Sec. 2, p. 306, L. 1891; re-en. Sec. 1491, Pol. C. 1895; re-en. Sec. 640, Rev. C. 1907; re-en. Sec. 827, R. C. M. 1921. Cal. Pol. C. Sec. 1344.

Collateral References
Elections 257, 265.
29 C.J.S. Elections §§ 235, 240.

23-2205. (828) Certificates issued by governor. The governor must, upon the receipt of the statement mentioned in section 23-1814, transmit to the person elected a certificate of his election, sealed with the great seal and attested by the secretary of the state.

History: En. Sec. 3, p. 306, L. 1891; re-en. Sec. 1492, Pol. C. 1895; re-en. Sec. 641, Rev. C. 1907; re-en. Sec. 828, R. C. M. 1921. Cal. Pol. C. Sec. 1347.

CHAPTER 23

RECOUNT OF BALLOTS—RESULTS

Section 23-2301. Recount of votes, order for—application, contents and time for making—hearing—determination by court.

- 23-2302. Failure to comply with provisions for counting votes, presumption of incorrectness from.
- 23-2303. Calling in other judge—court not divested of jurisdiction by failure to hear application within prescribed time.
- 23-2304. Precincts in which recount ordered—deposit of cost of recount—procedure when more than one application for recount made—manner of recounting votes—certificates of election.
- 23-2305. Recount limited to precincts and offices specified in order of court.
- 23-2306. Certificates of election, effect of recount on.
- 23-2307. Election officers not to be paid until after recount—not paid on finding incorrect count.
- 23-2308. Other provisions concerning contests, reference to.

23-2301. (828.1) Recount of votes, order for—application, contents and time for making—hearing—determination by court. Any unsuccessful candidate for any public office at any general or special election, or at any municipal election, may within five days after the canvass of the election returns by the board or body charged by law with the duty of canvassing such election returns, apply to the district court of the county in which said election is held, or to any judge thereof, for an order directed to such board to make a recount of the votes cast at such election, in any or all of the election precincts wherein the election was held, as hereinafter provided. Said application shall set forth the grounds for a recount, and it shall be verified by the applicant to the effect that the matters and things therein stated are true to the best of the applicant's knowledge, information and belief. Within five days after the filing of said application in the office of the clerk of said district court, the said court, or the judge thereof, shall hear and consider said application, and determine the sufficiency thereof; and, if from said verified application, the district court, or the judge thereof, finds that there is probable cause for believing that the judges and clerks of election did not correctly count and ascertain the number of votes cast for such applicant at any one or more of the election precincts that the judges and clerks of election might not have correctly counted and ascertained the number of votes cast for the applicant in any one or more election precincts, then, or in either of such events, the court or judge shall make an order addressed to the said board of county canvassers, requiring them at the time and place fixed by said order, which time shall be not more than five days from the making of such order to reassemble and reconvene as a canvassing board, and to recount the ballots cast at said election precinct or precincts of which complaint is made as in said order specified.

History: En. Sec. 1, Ch. 27, L. 1935.

Cross-Reference

Salaries withheld pending contests, secs. 59-508, 59-509.

Constitutionality

Sections 23-2301 et seq., held constitutional under art. V, sec. 23 as to sufficiency of title; art. III, sec. 27 as to due process of law, the holding of public office not being a property right, and the clause is satisfied when one is accorded the right to appear, be heard, file pleadings, make objections and participate fully in the hear-

ing. State ex rel. Riley v. District Court, 103 M 576, 584, 586, 64 P 2d 115.

Applicable to Candidates for Senate and House

Held, on application for writ of mandate, that the election recount statutes, sections 23-2301 et seq., apply to candidates for the state senate and house of representatives. State ex rel. Ainsworth v. District Court, 107 M 370, 372, 86 P 2d 5.

Courts Cannot Try Contests for Seats in Legislature, But May Hear Application for Recount

Article V, sec. 9 of the Constitution

makes each house of the legislative assembly the judge of the elections, returns and qualifications of its members, and courts cannot try contests for seats in the legislature or decide issues involved in such contests, but mandamus lies to compel the court to perform the duty specially imposed upon it by the recount statutes, sections 23-2301 et seq.; the election certificate does not insure acceptance of a candidate as a member of either house, but merely furnishes prima facie evidence that the majority of voters voted for him. State ex rel. Ainsworth v. District Court, 107 M 370, 376, 86 P 2d 5.

Direction by Court Within Its Jurisdiction

The court could proceed in any suitable manner or mode most conformable "to the spirit" of the code (sec. 93-1106) in the absence of specific direction as to how proceedings shall be conducted, and was within its jurisdiction in directing canvassers' attention to sections of the codes covering points in dispute. State ex rel. Riley v. District Court, 103 M 576, 587, 64 P 2d 115. (But see State ex rel. Peterson v. District Court et al., 107 M 482, 488, 86 P 2d 403, below.)

Dismissal of Application for Noneligibility

District court committed error in dismissing the application for a recount under this section on the ground that applicant, convicted of a felony in federal court lost his citizenship; such issue being properly triable in an election contest under the provisions of sections 23-926 et seq., or sections 94-1459 et seq. State ex rel. Stone v. District Court, 103 M 515, 519, 63 P 2d 147.

Functions of Court and Canvassing Board Divides

The law relating to proceedings for election recounts (secs. 23-2301 et seq.) specifically divides the functions of the court and the canvassing board. The court determines the grounds of and necessity for a recount and orders it done. The board is entrusted with the duty of making the recount, just as the judges and clerks of election are entrusted with the duty of making the count and certifying thereto in the first place. State ex rel. Peterson v. District Court et al., 107 M 482, 485, 86 P 2d 403.

Includes District Judge

Under this section et seq. providing for the recount of votes by board of county canvassers, any unsuccessful candidate, including a candidate for the office of district judge, may apply to the district court for a recount. State ex rel. Riley

v. District Court, 103 M 576, 580, 64 P 2d 115.

Liberal Construction Required

Held, under application for writ of supervisory control, that sections 23-2301 to 23-2307 should be liberally construed, and applicant having set forth that the votes were not correctly counted, such ground is sufficient to justify the court in finding that the votes "might not" have been correctly counted, and writ accordingly issued directing respondents to order the recount. State ex rel. Thomas v. District Court, 116 M 510, 511, 154 P 2d 980.

Not Made in Presence of Court—Illegal Ballots

A recount of ballots under this act is not made in the presence of the district judge ordering it; in acting, the board is not required to ask the advice of the judge as to whether ballots are or are not properly marked, and he may not give such advice; the board is in duty bound to "hear all, consider all, and then decide." State ex rel. Peterson v. District Court, 107 M 482, 486, 86 P 2d 403.

Not Remedy for Failure of Canvassing Board to Perform Duty Properly—Mandamus

Sections 23-2301 to 23-2307 providing for a recount of votes in one or more precincts alleged improperly counted, does not afford a legal remedy for an alleged wrongful canvass by a county canvassing board, and therefore does not defeat the right of a citizen to compel proper performance of their duty by writ of mandate. State ex rel. Lynch v. Batani, 103 M 353, 358, 62 P 2d 565.

Purpose of Recount Statute—Constitution

The sole purpose of the recount statutes, sections 23-2301 et seq. is to determine, in a doubtful case, whether the official canvass of the vote was correct, and where the office of state senator or representative is concerned, the election certificate does not insure one's acceptance as a member of either house, nor affect the ultimate right to the office, nor can the recount infringe upon the assembly's right to judge of the elections, returns and qualifications of its members in contravention of art. V, sec. 9 of the Constitution. State ex rel. Ainsworth v. District Court, 107 M 370, 372, 86 P 2d 5.

Recount Proceeding Not an Election Contest

A proceeding to obtain a recount of votes under sections 23-2301 et seq. is in no sense of the word an election contest, it is absolutely independent of the law relating to contesting of elections and either

or both remedies are available. State ex rel. Peterson v. District Court et al., 107 M 482, 484, 86 P 2d 403.

Statute In Pari Materia With Others

This section and those following authorizing recount of votes, etc. and sections 23-1812 et seq. relating to canvassers' abstract to secretary of state, are in pari materia and must be construed together, both the county and state board of canvassers being governed by the latter provisions in case the result of the election is changed upon a recount. State ex rel. Riley v. District Court, 103 M 576, 583, 64 P 2d 115.

Successive Recounts

This statute provides that an unsuccessful candidate may within five days after canvass of the ballots petition for a recount; where an unsuccessful candidate for sheriff obtained a recount and was declared elected, and his opponent, the former successful but then unsuccessful candidate also asked for and was granted a recount, held, on application for a writ of supervisory control, the five-day limitation commenced to run from the time the board of canvassers announced the result of the first recount, and the application coming within that time, the court had jurisdiction to grant the second recount. State ex rel. Peterson v. District Court, 107 M 482, 485, 86 P 2d 403.

When Application Timely

Where the board was compelled by writ of mandate to reconvene by the supreme

court and correct its findings with relation to two candidates for district judge, the application filed within five days after the corrected canvass was timely. State ex rel. Riley v. District Court, 103 M 576, 586, 64 P 2d 115.

When District and Supreme Courts May Not Control Actions of Boards

The rule that district courts may not advise boards of county canvassers on questions arising on a recount of ballots as to the legality or illegality of ballots cast, etc., applies also to the supreme court on application for extraordinary relief by way of writs, and it cannot control the actions of such boards indirectly by directions or suggestions to district courts. (If State ex rel. Riley v. District Court, 103 M 576, 64 P 2d 115, be open to a contrary construction it is to that extent overruled.) State ex rel. Peterson v. District Court, 107 M 482, 488, 86 P 2d 403.

References

State ex rel. Wulf v. McGrath, 111 M 96, 101, 106 P 2d 183.

Collateral References

Elections—260.

29 C.J.S. Elections § 237.

18 Am. Jur. 359, Elections, §§ 271 et seq.

Costs or reimbursement for expenses incident to election contest. 106 ALR 928.

Notice of election to fill vacancy in office at general election. 158 ALR 1184.

23-2302. (828.2) Failure to comply with provisions for counting votes, presumption of incorrectness from. If it shall be made to appear by such verified application that the judges or clerks of election in any one or more election precincts did not comply with each and all of the provisions and requirements of section 23-1705, in counting and ascertaining the number of votes cast for each person voted for at said election, that shall be considered as sufficient probable cause for believing that the judges and clerks of election of said election precinct, or precincts, did not correctly count and ascertain the number of votes cast for the applicant in such election precinct or precincts.

History: En. Sec. 2, Ch. 27, L. 1935.

23-2303. (828.3) Calling in other judge—court not divested of jurisdiction by failure to hear application within prescribed time. If the judge of said district court of the county in which said election is held be ill, or absent, or for any other reason disqualified from acting, then and in that event another district court judge shall be called in to hear and determine said application, either by an order of a judge of said district court, or by an order by a justice of the supreme court of the state of Montana. A failure to hear, consider or determine said application within the time herein provided, shall not divest the court of jurisdiction, but the said court before

which said application is presented and filed shall retain jurisdiction thereof for all purposes until said application is finally acted upon, considered and determined, and until a final count is made and had by the said board of county canvassers and the result thereof finally determined as herein provided.

History: En. Sec. 3, Ch. 27, L. 1935.

Extent of Jurisdiction of District Court

The jurisdiction of the district court before which an application for a recount of the votes is filed does not cease when it orders the board to reconvene and re-canvass the votes, but it retains jurisdiction of the proceeding until completion of the canvass, i. e. until the court is advised thereof. State ex rel. Riley v. Dis-

trict Court, 103 M 576, 587, 588, 64 P 2d 115.

References

State ex rel. Peterson v. District Court, 107 M 482, 487, 86 P 2d 403.

Collateral References

Elections—260.

29 C.J.S. Elections § 237.

23-2304. (828.4) Precincts in which recount ordered—deposit of cost of recount—procedure when more than one application for recount made—manner of recounting votes—certificates of election. (1) If said application asks for a recount of the votes cast in more than one election precinct, but the grounds thereof are not sufficient for a recount in all, the court shall order a recount as to only such precinct as to which there are sufficient grounds stated and shown. The court in its order shall determine the probable expense of making such recount, and the applicant or applicants asking for such recount shall deposit with the said board the amount so determined and specified in said order, in cash; and if it be ascertained by said recount that the applicant or applicants have been elected to said office, then and in that event all money so deposited with said board shall be returned to the said applicant or applicants, but if an applicant as a result of said recount is found not to have been elected, then if the expense of making said recount shall be greater than the estimated cost thereof said applicants shall pay said excess, but if less than the estimated cost, then the difference shall be refunded to the applicant or applicants. The expense of making said recount as herein provided, shall be the salary of the members of the canvassing board for the period of time required to make such recount, and the salary of two clerks at the rate of not more than \$8.00 per day each.

(2) If more than one candidate makes application for a recount of the votes cast at said election, the court may, in its discretion, consider such applications separately or together, and may make separate or joint orders in relation thereto, and apportion the expense between said applicants. The board of canvassers, in recounting said ballots cast in said election, shall count the votes cast in the respective precincts as to which a recount is ordered for the several candidates in whose behalf a recount is ordered, at the same time, in the following manner:

(3) The county clerk shall produce, unopened, the sealed package or envelope received by him from the judges of election of the election precinct, or precincts, as to which a recount is ordered, in which is enclosed all ballots voted at such election in said precinct or precincts; and the package or envelope must then be opened by a member of the board of county canvassers in the presence and view of the other members of said board and

of the county clerk, and of the candidates for said office or offices as to which said recount is ordered, present thereat. The ballots must then be taken from said packages or envelope by a member of the board, and in the presence of the candidate or candidates seeking such recount, and the candidate or candidates who by the first canvass was found to have received the highest number of votes, the ballots must be taken singly by one of the members of the canvassing board, and the contents thereof, while exposed to the view of said candidates and of one of the other members of said canvassing board, must be distinctly read aloud, and as the ballots are read, two clerks must write at full length, on sheets to be known as tally sheets, which shall be previously prepared for that purpose, one for each clerk, with the name of said respective candidates and the office or offices as to which a recount is being made, with the numbers of such election precincts as to which said recount is ordered, and the number of votes for each person in said election precinct or precincts. At the completion of said recount the tally sheets must then be compared and their correctness ascertained, and the total number of votes cast for any candidate determined. If, on such recount, the votes cast for any candidate who makes such application shall be either more or less than the number of votes shown upon the official returns for that person and office, then the original returns shall be thereupon by the clerk of said board of canvassers, and under its direction, corrected so as to state the number of votes ascertained on such recount.

(4) The said board of canvassers shall thereupon cause its clerk to enter on the records of said board the result of said election as determined by such recount, and the clerk of said board shall thereupon make out and deliver certificate of election in conformity to the result ascertained by said recount.

(5) The candidate who as a result of the original or first canvass of the returns by the board of canvassers was found to be elected, shall be served with a copy of the application, and shall be given an opportunity to be heard thereon, and he shall be permitted to be present and to be represented at any recount ordered.

(6) When said recount of the ballots in any election precinct has been finished, the ballots shall then be again enclosed in the same package or envelope in which they had been placed by the judges of election, and in the presence and view of the county clerk and the members of the board of canvassers the said packages or envelopes shall again be closed and sealed, and then again delivered into the custody of the county clerk.

History: En. Sec. 4, Ch. 27, L. 1935.

23-2305. (828.5) Recount limited to precincts and offices specified in order of court. The board of canvassers shall make no recount of any votes cast in any election precinct or for any office other than the precinct or precincts and office or offices specified in said order.

History: En. Sec. 5, Ch. 27, L. 1935.

23-2306. (828.6) Certificates of election, effect of recount on. If it shall be found and determined by said recount that the person to whom the county clerk had issued a certificate of election pursuant to section 23-1808,

did not in fact receive the highest number of votes cast at said election for said office, then the said certificate of election first issued by said clerk shall be void, and the certificate of election issued by said clerk pursuant to the findings and determination of said recount shall be treated and considered, for all purposes as the only certificate of election to said office, and the person named therein shall be the person elected to said office.

History: En. Sec. 6, Ch. 27, L. 1935.

Collateral References

ElectionsⒸ267.

29 C.J.S. Elections § 240.

23-2307. (828.7) Election officers not to be paid until after recount—not paid on finding incorrect count. No judge or clerk of any election, of any election precinct, as to which a recount is ordered shall receive any pay for his or her services as such judge or clerk until the completion of such recount by the said canvassing board, and if it shall be ascertained on such recount that any applicant in whose behalf such recount is had, has been elected, then in that event, the judges and clerks of the election precincts in which the votes were found to have not been correctly counted shall not be paid or receive any pay for their services as such.

History: En. Sec. 7, Ch. 27, L. 1935.

Collateral References

ElectionsⒸ53.

29 C.J.S. Elections § 63.

23-2308. (829) Other provisions concerning contests, reference to. See sections 23-926 to 23-928 and sections 94-1464 to 94-1468 for other provisions governing election contests.

History: New section recommended by code commissioner, 1921.

CHAPTER 24

CONVENTIONS TO RATIFY PROPOSED AMENDMENTS TO CONSTITUTION OF THE UNITED STATES

- Section 23-2401. Convention for ratification of amendments to United States constitution.
- 23-2402. Delegates to constitutional convention.
- 23-2403. Nomination of delegates.
- 23-2404. Election of delegates.
- 23-2405. Form of ballot.
- 23-2406. Time for convention of delegates.
- 23-2407. Quorum—officers—procedure—qualifications.
- 23-2408. Compensation of delegates and officers.
- 23-2409. Certificate of result—transmission to secretary of state of United States.
- 23-2410. Qualification of signers of petitions and electors.
- 23-2411. Federal acts to supersede state provisions concerning amendments.

23-2401. (829.1) Convention for ratification of amendments to United States constitution. Whenever the Congress shall propose an amendment to the constitution of the United States and shall propose that the same be ratified by convention in the states, a convention shall be held, as provided herein, for the purpose of ratifying such amendment.

History: En. Sec. 1, Ch. 188, L. 1933.

Collateral References

Constitutional LawⒸ10.

16 C.J.S. Constitutional Law § 6.

23-2402. (829.2) Delegates to constitutional convention. The number of delegates to be chosen to such convention shall be not less than one-half of the number of the members of the legislative assembly of Montana, and each county shall have one-half of the number of delegates as it is then entitled to elect members of the legislative assembly of Montana, provided, that when the number is an odd number, each county shall be entitled to one-half of the next even number. The delegates shall be elected at the next general election or primary nominating election held throughout the state, after the Congress has proposed the amendment, or at a special election to be called by the governor, at his discretion, by proclamation at any time after the Congress has proposed the amendment, and except as otherwise provided herein, the election, in all respects, from the nomination of candidates to and including the certificate of election, shall be in accordance as nearly as may be with the laws of the state relating to the election of members of the legislative assembly of the state.

History: En. Sec. 2, Ch. 188, L. 1933.

23-2403. (829.3) Nomination of delegates. Nomination of a candidate for the office of delegate shall be by petition, which shall be signed by not less than one hundred voters of the county. Nominations shall be without party or political designation, but shall be as "in favor of" or "opposed to" ratification of the proposed amendment. All petitions and the acceptances thereof shall be filed not less than thirty days prior to the election.

History: En. Sec. 3, Ch. 188, L. 1933.

23-2404. (829.4) Election of delegates. The results of the election shall be determined as follows: The total number of votes cast for each candidate "in favor of" ratification, and the total number of votes cast for all candidates "in favor of" ratification and the total number of votes cast for each candidate "opposed to" ratification and the total number of votes cast for all candidates "opposed to" ratification shall be ascertained, and the candidates equal to the number to be elected receiving the highest number of votes from the side that casts the greater number of votes in favor of or opposed to ratification, as the case may be, shall be deemed elected.

History: En. Sec. 4, Ch. 188, L. 1933.

23-2405. (829.5) Form of ballot. On the official ballot there shall be printed the proposed amendment, the names of candidates for delegates to the convention, and appropriate instructions to the voters, all in substantially the following form:

PROPOSED AMENDMENT TO THE CONSTITUTION OF THE UNITED STATES

Delegates to the Convention to Ratify the Proposed Amendment.

The Congress has proposed an amendment to the Constitution of the United States which provides, (insert here the substance of the proposed amendment.)

The Congress has also proposed that the said amendment shall be ratified by conventions in the states.

In favor of ratification of the proposed amend- ment. Vote for candidates only.	Opposed to ratification of the proposed amend- ment. Vote for candidates only.
Names of candidates.	Names of candidates.

History: En. Sec. 5, Ch. 188, L. 1933.

23-2406. (829.6) Time for convention of delegates. The delegates to the convention shall meet at the state capitol on the first Monday in the month following the election, at 10:00 o'clock a. m., and shall constitute a convention to act upon the proposed amendment to the constitution of the United States.

History: En. Sec. 6, Ch. 188, L. 1933.

23-2407. (829.7) Quorum—officers—procedure—qualifications. A majority of the total number of delegates to the convention shall constitute a quorum. The convention shall have power to choose a president and secretary, and all other necessary officers, and to make rules governing the procedure of the convention. It shall be the judge of the qualifications and election of its own members.

History: En. Sec. 7, Ch. 188, L. 1933.

23-2408. (829.8) Compensation of delegates and officers. Each delegate shall receive mileage and per diem as provided by law for members of the legislative assembly. The secretary and other officers shall receive such compensation as may be fixed by the convention.

History: En. Sec. 8, Ch. 188, L. 1933.

23-2409. (829.9) Certificate of result—transmission to secretary of state of United States. When the convention shall have agreed by a majority of the vote of the total number of delegates in attendance at such convention, a certificate to that effect shall be executed by the president and secretary of the convention, and transmitted to the secretary of state of the United States.

History: En. Sec. 9, Ch. 188, L. 1933.

23-2410. (829.10) Qualification of signers of petitions and electors. Those entitled to petition for the nomination of candidates and to vote at such election shall be determined as now provided by the registration laws of Montana.

History: En. Sec. 10, Ch. 188, L. 1933.

23-2411. (829.11) Federal acts to supersede state provisions concerning amendments. If the Congress shall either in the resolution submitting the proposed amendment, or by statute, prescribe the manner in which the

convention shall be constituted, the preceding provisions of this act shall be inoperative, and the convention shall be constituted and held as the said resolution or act of Congress shall direct, and all officers of the state of Montana who may by said resolution or statute be authorized to direct, or be directed to take any action to constitute such a convention for this state, are hereby authorized and directed to act thereunder, and in obedience thereto, with the same force and effect as if acting under a statute of this state.

History: En. Sec. 11, Ch. 188, L. 1933.

TITLE 24

ELECTRIC LINES CONSTRUCTION

Chapter 1. Regulation, construction of electric light, heat and power lines, 24-101 to 24-144.

CHAPTER 1

REGULATION, CONSTRUCTION OF ELECTRIC LIGHT, HEAT AND POWER LINES

- Section 24-101. Overhead construction of light, heat and power lines.
24-102. Space between arms on poles or appliances for high and low voltage.
24-103. Cross-arms.
24-104. Bridge arms.
24-105. Double arms.
24-106. Guy attachments.
24-107. Guy insulation.
24-108. Guy clearance.
24-109. Arc lamps.
24-110. Wire insulation.
24-111. Trolley and "span" wires.
24-112. Foregoing provisions apply to current and voltage for light, heat and power.
24-113. Provisions not applicable, and when—climbing space.
24-114. Overhead line construction of telephone, telegraph and other signal wires—cross-arms.
24-115. Climbing space.
24-116. Guy insulation.
24-117. "Aerial" cable supports.
24-118. Poles or appliances used jointly for electric light, heat or power wires and telephones, telegraph or other signal wires.
24-119. Same—climbing space—cross-arms.
24-120. Guy insulation for joint construction.
24-121. Two or more lines on same side of street—climbing space.
24-122. General construction for all wires and voltage.
24-123. Side arms.
24-124. Guy wire and anchor protection.
24-125. National electrical safety code—applies when.
24-126. Protection of ground wires on poles.
24-127. Generating and substation equipment, records and warnings.
24-128. Protective devices.
24-129. Air-gap and oil-break switches, where required—number of workmen employed—circuit-breaking devices.
24-130. Fuse requirements.
24-131. Safety measures—head room—guarding passages, manways, etc.—grounding of wires.
24-132. Opening to outer air for manholes.
24-133. Violation of act a misdemeanor—penalty.
24-134. Date for act to take effect.
24-135. Repealing clause.
24-136. Moving of structures—interference with electric wires.
24-137. Notice, when and how given.
24-138. Duties of the owner in such case.
24-139. Interference with lines.
24-140. Repealing clause—exception.
24-141. Scope of act.
24-142. Regulation of electrical construction by rural electrification associations.

24-143. Adoption of national electrical safety code.

24-144. Violation of act a misdemeanor—penalty.

24-101. (2677) Overhead construction of light, heat and power lines.

Any person, company, or corporation, except any rural electric cooperative corporations organized under chapter 5 of Title 14, owning or using any pole or appliance on which is run, placed, erected, or maintained in the state of Montana, any wire or cable used or to be used to conduct or carry electricity for the purpose of light, heat, or power, shall provide and maintain an unobstructed climbing space adjacent to any such pole or appliance, so that persons shall be able to ascend any such pole or appliance with reasonable safety and convenience up to and through the wires, connections, attachments, and structures of any such pole or appliance, and all cases where any "buck" or reverse arm is used, or where special construction is used, there shall be provided and maintained unobstructed climbing space of not less than thirty (30) inches square, omitting the area of any pole or appliance.

Where six (6) pin "buck" arms are used and all pins are occupied, they shall be ten (10) feet six (6) inches long and shall provide for sixty (60) inch pole pin spacing, fourteen (14) inch side spacing and five (5) inch end spacing.

History: En. Sec. 1, Ch. 171, L. 1917;
re-en. Sec. 2677, R. C. M. 1921; amd. Sec.
1, Ch. 137, L. 1941.

Rural electrification, sec. 14-501 et seq.
State electrification authority, secs. 89-
201 to 89-215.

Cross-References

Highways, placing lines along, sec. 70-
301.

Interference with or injury to electric
lines, secs. 94-3203, 94-3209.

Collateral References

Electricity 9 et seq.

29 C.J.S. Electricity § 16.

18 Am. Jur. 419, Electricity, §§ 16 et
seq.

24-102. (2678) Space between arms on poles or appliances for high and low voltage. At least one (1) standard pole-gain, or the equivalent of four (4) feet, shall be left vacant between the nearest cross-arm on which is placed or maintained any wire or cable conducting or carrying more than seven hundred and fifty (750) volts of electricity, and any cross-arm occupied by or used for wires or cables carrying seven hundred and fifty (750) volts or less, except that on all new construction and the rebuilding of present construction, the series street lighting wires may be placed on the outer pin positions of the secondary cross-arm and shall be properly designated on the cross-arm as the series street lighting circuit.

The said standard pole-gain shall be spaced not less than twenty-four (24) inches center to center, except that one (1) "buck" or reverse arm may be placed not less than twelve (12) inches below any cross-arm; and provided that this section shall be held not to apply to bridge construction; and further provided, that it shall be held not to apply to primary taps to transformers on poles, and provided further, that all such primary taps leading to transformers on poles shall have insulation equivalent to the rated primary voltage of the transformer, except where transformers with cover mounted primary bushings and without primary fused cutouts are mounted within three (3) feet of the top of the pole on vertical type construction, bare or weather proof wire may be used for primary taps to transformers.

History: En. Sec. 2, Ch. 171, L. 1917;
re-en. Sec. 2678, R. C. M. 1921; amd. Sec. 2,
Ch. 137, L. 1941; amd. Sec. 1, Ch. 45, L.
1949.

Collateral References

Liability for injury to or death of child
from uninsulated electric wires while
climbing tree. 27 ALR 2d 214.

24-103. (2679) Cross-arms. All cross-arms shall be made from clear, straight-grained wood, or standardized material. The cross-section of wood arms shall be not less than three and one-half ($3\frac{1}{2}$) by four and one-half ($4\frac{1}{2}$) inches. The pin spacing shall be, for six-pin arms, not less than thirty-inch (30") center for pole pin spacing, fourteen-inch (14") side spacing, and five-inch (5") end spacing; and four-pin arms not less than thirty-inch (30") center for pole pin spacing, fourteen-inch (14") side spacing and five-inch (5") end spacing. Where distribution voltages of between seven thousand five hundred (7,500) and fifteen thousand (15,000) volts are used, a climbing space of thirty (30) inches is permissible when the pole pins are occupied by the neutral and a phase wire.

History: En. Sec. 3, Ch. 171, L. 1917;
re-en. Sec. 2679, R. C. M. 1921; amd. Sec.
3, Ch. 137, L. 1941.

24-104. (2680) Bridge arms. Bridge arms having the same pin spacing as the standard cross-arm and a cross-section of not less than four by six inches may be installed in alleys or at alley and street intersections, wherever such construction may be proper, to provide the necessary clearance for fire-escapes and other obstructions which may be overhanging the alley. All such structures shall be provided with idle arm, or span wire, for use of workmen.

History: En. Sec. 4, Ch. 171, L. 1917;
re-en. Sec. 2680, R. C. M. 1921.

24-105. (2681) Double arms. Double arms, if of wood, shall be used at all line terminals where there is excessive strain, and on corners and curves where the departure from a straight line exceeds twenty (20) degrees. Line terminals of more than three (3) number six (6) copper wires, or the equivalent, shall be construed as excessive strain for one (1) arm. Line terminals and corners may be made on approved strain insulators or racks bolted directly to the pole in a vertical plane. All double arms must be blocked or bolted in accordance with standard practice.

History: En. Sec. 5, Ch. 171, L. 1917;
re-en. Sec. 2681, R. C. M. 1921; amd. Sec.
4, Ch. 137, L. 1941.

24-106. (2682) Guy attachments. All overhead or horizontal guy wires, when attached to poles, stubs, or other ungrounded supports, shall be installed not less than eight (8) feet above the ground. Guy wires shall be attached to approved guy rods and anchors or to other grounded supports only when protected from kinks and abrasion.

History: En. Sec. 6, Ch. 171, L. 1917;
re-en. Sec. 2682, R. C. M. 1921; amd. Sec.
5, Ch. 137, L. 1941.

24-107. (2683) Guy insulation. Any guy wire attached to any pole or appliance on which is run, erected, or maintained any wire or cable used to conduct or carry electricity for the purpose of light, heat, or

power, or used jointly with telephone, telegraph, or other signal wires, shall be permanently and effectively insulated at all times, by the insertion of at least two (2) strain insulators. The upper of these insulators shall be inserted in the guy so as to be at least six (6) feet in a horizontal line from the pole itself, and the second strain insulator shall be inserted in the guy so as to be not less than eight (8) feet in a vertical line from the surface of the ground. In short guys in which the two (2) insulators are required, and which will be located at the same points or near each other, two (2) insulators may be coupled in series and put into the guy together. All strain insulators shall be so constructed and maintained that the guy wire or guy cable holding the insulator in place shall interlock in case of failure or breakage thereof. The above shall not apply to railway electrification, where at least one (1) insulator shall be inserted in each end of every auxiliary cross-span, and one in each auxiliary guy, and provided further, that in accord with the provisions of the national electric safety code, the above shall not apply to lines in rural areas where a common neutral is used and both primary and secondary circuits and also the guys are grounded to said common neutral and said common neutral has at least four (4) ground connections in each mile in addition to each ground connection at individual services.

History: En. Sec. 7, Ch. 171, L. 1917; 6, Ch. 137, L. 1941; amd. Sec. 1, Ch. 248, re-en. Sec. 2683, R. C. M. 1921; amd. Sec. L. 1947.

24-108. (2684) Guy clearance. Guy wires shall be attached to poles, so as to interfere as little as possible with workmen climbing or working thereon. Every guy wire which passes either over or under an electric light or power wire, other than those attached to the guyed pole, shall be so placed and maintained as to provide a clearance of not less than three feet between the guy and any electric wire.

History: En. Sec. 8, Ch. 171, L. 1917;
re-en. Sec. 2684, R. C. M. 1921.

24-109. (2685) Arc lamps. No arc lamp shall be erected or maintained in the state of Montana on any pole or appliance, unless such arc lamp be so constructed and maintained as to be lowered within nine (9) feet from the surface; provided, that this section shall not include arc lamps used for ornamental street lights attached to iron pedestals or any arc lamp attached to buildings, poles, or other structures which do not carry wire other than those feeding the lamp.

History: En. Sec. 9, Ch. 171, L. 1917;
re-en. Sec. 2685, R. C. M. 1921; amd. Sec.
7, Ch. 137, L. 1941.

24-110. (2686) Wire insulation. The standard insulation, wherever insulation is used, for any wire or cable run, placed, or erected in any city or town in the state of Montana, and used to conduct or carry electricity for light, heat, or power, for all voltage, shall have at least a triple-braided weatherproof cover.

History: En. Sec. 10, Ch. 171, L. 1917;
re-en. Sec. 2686, R. C. M. 1921.

24-111. (2687) Trolley and "span" wires. Trolley wires must readily stand the strain put upon them when in use, and shall have a double in-

sulation from the ground. In wooden-pole construction the pole shall be considered one insulation. In all cases where "span" wires are attached to grounded supports, or on buildings or other structures, there shall be provided and maintained at least two approved insulators in any such "span" wire between the trolley and any such other structures. The outer insulators shall be placed at a distance equal to that of the curb. Any "span" wire attached to buildings or other structures shall be stranded iron or steel wire, and shall readily stand the strain put upon them in use. None of the provisions of this section shall be held to apply where "feed" wires are used in place of "span" wires.

History: En. Sec. 11, Ch. 171, L. 1917;
re-en. Sec. 2687, R. C. M. 1921.

Collateral References

Street Railroads \S 36 et seq.
83 C.J.S. Street Railroads \S 105.

24-112. (2688) Foregoing provisions apply to current and voltage for light, heat and power. All of the foregoing provisions of this act shall include current and voltage used for light, heat, or power, not to exceed fifteen thousand (15,000) volts of electricity between phase wires for distribution circuits.

History: En. Sec. 12, Ch. 171, L. 1917;
re-en. Sec. 2688, R. C. M. 1921; amd. Sec.
8, Ch. 137, L. 1941.

24-113. (2689) Provisions not applicable, and when—climbing space. None of the provisions of sections 24-101 to 24-103, inclusive, of this code shall be held to apply to direct-current wire carrying nominally six hundred volts of electricity, and used for street railway purposes; provided, however, that an unobstructed climbing space not less than twenty-six inches in a horizontal line shall at all times be provided and maintained.

History: En. Sec. 13, Ch. 171, L. 1917;
re-en. Sec. 2689, R. C. M. 1921.

24-114. (2690) Overhead line construction of telephone, telegraph and other signal wires—cross-arms. All cross-arms in overhead line construction of telephone, telegraph, and other signal wires shall be made from clear, straight-grained wood, or standardized material. In such construction, wood cross-arms shall be used having a cross-section of not less than three and one-fourth ($3\frac{1}{4}$) by four and one-fourth ($4\frac{1}{4}$) inches, except where steel pins are used or where two-pin arms are used. For cross-arms having six (6) or more pins the standard pin spacing shall be not less than sixteen (16) inches from center to center of pole pins.

History: En. Sec. 14, Ch. 171, L. 1917;
re-en. Sec. 2690, R. C. M. 1921; amd. Sec.
9, Ch. 137, L. 1941.

Collateral References

Street Railroads \S 36 et seq.
83 C.J.S. Street Railroads \S 105 et seq.

24-115. (2691) Climbing space. Any person, company, or corporation owning or using any pole or appliance used exclusively for more than four (4) telephone, telegraph, or other signal wires, shall provide and maintain an unobstructed climbing space of not less than sixteen (16) inches.

Whenever "buck" or reverse arms are used, an unobstructed climbing space shall be left adjacent to the pole or appliance at least twenty (20) inches square, omitting the area of any such pole or appliance; any wire or cable attached to the pole in such buck-arm construction, not less than

forty (40) inches from the nearest cross-arm, shall be held not to be an obstruction to the climbing space as herein provided.

History: En. Sec. 15, Ch. 171, L. 1917;
re-en. Sec. 2691, R. C. M. 1921; amd. Sec.
10, Ch. 137, L. 1941.

Collateral References

Telecommunications 101.

86 C.J.S. Telegraphs and Telephones § 35
et seq.

24-116. (2692) Guy insulation. In all cases where guy wires pass over, under, or between electric light, heat, or power wires, they shall be permanently and effectively insulated at all times by the insertion of at least two (2) strain insulators. The upper of these insulators shall be inserted in the guy so as to be at least six (6) feet in a horizontal direction from the pole itself, and the second strain insulator shall be inserted in the guy so as to be not less than eight (8) feet from the surface of the ground in a vertical line. In short guys in which the two (2) insulators herein required would be located at the same point, or near each other, two (2) insulators may be coupled in series and put into the guy together.

On poles used exclusively for telephone, telegraph, or other signal wires and cables, anchor guys for guying aerial cable leads shall be insulated from the messenger wires by being placed on separate shims, or a strain insulator shall be placed in the guy not less than eight (8) feet above the surface of the ground.

History: En. Sec. 16, Ch. 171, L. 1917;
re-en. Sec. 2692, R. C. M. 1921; amd. Sec.
11, Ch. 137, L. 1941.

Collateral References

Street Railroads 36; Telecommunications 101.

83 C.J.S. Street Railroads § 105; 86
C.J.S. Telegraphs and Telephones § 35.

24-117. (2693) "Aerial" cable supports. All "aerial" cables having two hundred pairs of number nineteen B & S gauge copper wires, or four hundred pairs of number twenty-two B & S gauge copper wires, shall be supported by through bolts at least five-eighths inches in diameter; at all railroad and high-tension crossings, grades, curves, and corners, such cable shall be reinforced by a strap supported by a lag-screw or through bolts at least one-half inch in diameter, or other appliance of equal strength.

History: En. Sec. 17, Ch. 171, L. 1917;
re-en. Sec. 2693, R. C. M. 1921.

24-118. (2694) Poles or appliances used jointly for electric light, heat or power wires and telephones, telegraph or other signal wires. A separation of at least four feet, measured at the pole, shall be provided and maintained between any telephone, telegraph, and other signal wires or cables, and electric light, heat, or power wires, carrying not to exceed four hundred and forty volts; provided, that when the telephone, telegraph, or signal wires or cables are above the electric light, heat, or power wires carrying a voltage in excess of four hundred and forty volts, the clearance shall be eight feet. Telephone, telegraph, and other signal wires or cables shall preferably be run and maintained below electric light, heat, and power wires or cable. In no case shall telephone, telegraph, or other signal wires smaller than No. 12 N. B. S. gauge copper wire, or No. 12 B. W. G. iron wire be run or maintained as "lead" wires above electric light, heat, or power wires; provided, that this shall be held not to apply to telephone,

telegraph, or signal wires used exclusively to maintain electric light, heat, and power line.

History: En. Sec. 18, Ch. 171, L. 1917;
re-en. Sec. 2694, R. C. M. 1921.

24-119. (2695) Same — climbing space — cross-arms. All telephone, telegraph, or other signal wires placed on poles jointly used for electric light, heat, and power wires, shall have an unobstructed climbing space of not less than twenty-six inches. All telephone, telegraph, or other signal wires placed on poles jointly used for light, heat, or power wires shall be placed and maintained on cross-arms, except that brackets may be maintained on one side of the pole not nearer than two feet below the lowest cross-arm, for the purpose of carrying duplex wires or cables to distribute telephone, telegraph, or signal wires.

History: En. Sec. 19, Ch. 171, L. 1917;
re-en. Sec. 2695, R. C. M. 1921.

24-120. (2696) Guy insulation for joint construction. All joint construction for wires or cable of different and conflicting voltage, as outlined in the preceding section, shall be guyed in the same manner as specified for electric light, heat, and power construction.

History: En. Sec. 20, Ch. 171, L. 1917;
re-en. Sec. 2696, R. C. M. 1921.

24-121. (2697) Two or more lines on same side of street—climbing space. In all cases where there are two or more pole lines used for telephone, telegraph, or other signal wires, on the same side of any street, alley, or public highway, provided such lines are not parallel on a horizontal plane, the cross-arms shall have an unobstructed climbing space of not less than twenty-six inches.

History: En. Sec. 21, Ch. 171, L. 1917;
re-en. Sec. 2697, R. C. M. 1921.

24-122. (2698) General construction for all wires and voltage. All poles shall be of the best quality cedar or other standardized material, except poles carrying one telephone circuit for rural or farmers' use. No pole shall be maintained which has not sufficient strength to safely sustain itself when supporting wires are removed.

History: En. Sec. 22, Ch. 171, L. 1917;
re-en. Sec. 2698, R. C. M. 1921.

24-123. (2699) Side arms. When necessary to avoid obstruction, a side or offset arm may be used. In all such cases a special arm of the same dimensions as the standard arm shall be used. This arm shall be bored for pins and bolts and installed with an angle-iron brace. Wherever a transformer is used on any such pole on which side arm construction is used, an idle arm shall be provided.

History: En. Sec. 23, Ch. 171, L. 1917;
re-en. Sec. 2699, R. C. M. 1921.

24-124. (2700) Guy wire and anchor protection. Where guy wires installed on public highways are subject to mechanical injury, they shall be protected with a shield. This shield may consist of an iron pipe or a suitable wood shield, which may be clamped on the guy itself. The guy shield

shall extend from the anchor rod up to a height of approximately seven feet.

History: En. Sec. 24, Ch. 171, L. 1917;
re-en. Sec. 2700, R. C. M. 1921.

24-125. (2701) National electrical safety code—applies when. The national electrical safety code standards shall govern all future construction where wires for power, heat, light, telephone, telegraph or signal cross each other, or cross railroad tracks. Hereafter all future electrical construction of overhead and underground electrical supply and communication lines in the state of Montana not provided for by the provisions of this chapter shall be in conformity with the rules and regulations set forth in the national electrical safety code approved by the American engineering standards committee as published by the department of commerce of the United States and any and all revisions thereof as the same may exist from time to time, provided that this section shall not be held to apply to interstate railroad electrification construction except where the wire or wires of the railroad cross or are crossed by wires belonging to others. Said safety code shall be interpreted and enforced by the railroad and public service commission of Montana as furnishing the standards of construction. This section shall not be held to conflict with any of the specific provisions of the Revised Codes of Montana as amended.

History: En. Sec. 25, Ch. 171, L. 1917;
re-en. Sec. 2701, R. C. M. 1921; amd. Sec.
12, Ch. 137, L. 1941.

24-126. (2702) Protection of ground wires on poles. Any person, company, or corporation owning or using any poles for light, heat, or power wires, or poles used jointly for light, heat, or power wires, and telephone, telegraph and other signal wires, on which vertical ground wires are run, shall cause all such wires to be enclosed from the uppermost contact on the pole downward for a distance of five (5) feet below the lowest cross-arm, or other wire supporting attachment used for light, heat or power wires and for a distance of eight (8) feet above the surface of the ground, in a casing equal in durability and insulating efficiency to a wooden casing not less than one and one-fourth ($1\frac{1}{4}$) inches thick; provided however, that the said casing may be omitted on poles supporting circuits carrying not more than four hundred forty (440) volts, and on poles in rural areas where a common grounded neutral is used. In all cases where ground wires are likely to be accidentally broken, mechanical protection should be provided. All metal casings shall be permanently and effectively grounded; provided, that this section shall not be held to apply to wires or cables which lead from overhead to underground systems, and further provided, that it shall not apply to high-tension lines of fifteen thousand (15,000) volts or more.

History: En. Sec. 26, Ch. 171, L. 1917;
re-en. Sec. 2702, R. C. M. 1921; amd. Sec.
13, Ch. 137, L. 1941; amd. Sec. 2, Ch. 248,
L. 1947; amd. Sec. 2, Ch. 45, L. 1949.

Compiler's Note

No mention of amendment by Ch. 248 of Laws 1947 was made in the title or amending clause of Ch. 45 of Laws 1949.

Collateral References

Liability for injury to or death of child from electric wires while climbing tree.
27 ALR 2d 204.

Adult's intentional body contact with electrified wire as contributory negligence.
34 ALR 2d 98.

24-127. (2703) Generating and substation equipment, records and warnings. In every generating and substation used for light, heat, or power, there shall be kept a log-book or record showing the changes in the condition of operation, including the starting and stopping of electrical supply equipment, the name of each foreman or workman locally in charge of work, and all unusual occurrences and accidents.

The log-book or record shall be signed by the person in charge before being relieved. He shall keep within sight an operating diagram or equivalent device, indicating whether electrical supply circuits are open or closed, and where work is being performed. On circuits carrying normally in excess of seventy-five hundred volts, the operator in charge shall place "Men at Work" tags upon switches controlling any circuits upon which men are known to be working, and it shall be his duty to enforce the safety rules, and permit only authorized persons to approach the equipment or lines.

This section shall not apply to isolated plants, generating current for telegraph, telephone, and signaling purposes.

History: En. Sec. 27, Ch. 171, L. 1917;
re-en. Sec. 2703, R. C. M. 1921.

Collateral References
Electricity 14(3).
29 C.J.S. Electricity § 40.

24-128. (2704) Protective devices. There shall be provided in conspicuous and suitable places in electrical stations and shops, a suitable and sufficient supply of first-aid and protective devices, all of approved kinds and qualities; the kinds and number of such devices will depend on the requirements of each case, as may be from time to time prescribed by the state industrial accident board, and it shall be the duty of the said state industrial accident board to prescribe such necessary protective devices. All such prescribed devices shall be kept, when not in use, in their regular location and in good working order.

History: En. Sec. 28, Ch. 171, L. 1917;
re-en. Sec. 2704, R. C. M. 1921.

Collateral References
Electricity 14(3).
29 C.J.S. Electricity § 40.

24-129. (2705) Air-gap and oil-break switches, where required—number of workmen employed—circuit-breaking devices. All circuits of four hundred and forty volts or more, where originating or terminating in any inclosure or building, or used for underground, shall be provided with air-gap switches or other approved devices; if any of the above circuits are of seven and one-half kilowatts or more capacity, they shall, in addition, be provided with an oil-break switch, or other approved device which will safely open the circuit under the load.

There shall be no less than two experienced electricians employed on any work or maintenance to be performed on any electrical wires or equipment connected therewith carrying nominally six hundred volts or more; provided, however, that this shall not apply to the operation of electrical equipment, nor in cases of emergency.

Direct-current feeders of two hundred and fifty volts or over shall be protected by approved circuit-breaking devices.

History: En. Sec. 29, Ch. 171, L. 1917;
re-en. Sec. 2705, R. C. M. 1921.

24-130. (2706) Fuse requirements. All fuses shall be inclosed, or expulsion type, or other approved "national electrical code" standards.

History: En. Sec. 30, Ch. 171, L. 1917;
re-en. Sec. 2706, R. C. M. 1921.

24-131. (2707) Safety measures—head room—guarding passages, manways, etc.—grounding of wires. Where necessary, all forms of electrical apparatus shall be effectively grounded for the protection of persons.

Wherever wires or conductors are installed within inclosures or buildings, in and about switchboards and other appliances where conductors are run, placed, or erected, a clear head room of six and one-half feet above the floor or surface must be maintained, or the wires be effectively guarded. All apparatus, passages, manways, and other places where persons may enter into, must be protected with efficient guards in accordance with standard practice; provided, this shall not be held to apply to electrical machinery and auxiliary devices carrying six hundred volts or less.

When lines or wires carrying seventy-five hundred volts or more are disconnected from their source of power, for work to be performed thereon, said lines or wires shall be effectively grounded for the protection of workmen.

History: En. Sec. 31, Ch. 171, L. 1917;
re-en. Sec. 2707, R. C. M. 1921.

24-132. (2708) Opening to outer air for manholes. The openings to outer air for any manhole used for light, heat, or power shall be circular in shape, and shall not be less than twenty-four inches in diameter.

The opening to outer air for any manhole used for telephone, telegraph, or other signal wires shall be circular in shape, and shall be not less than twenty inches in diameter.


Whenever persons are working in any manhole, whose opening to the outer air is less than three feet from the rail of any railway or street-car track, a watchman or attendant shall be stationed on the surface at the entrance of such manhole at all times while work is being performed therein.

History: En. Sec. 32, Ch. 171, L. 1917;
re-en. Sec. 2708, R. C. M. 1921.

24-133. (2709) Violation of act a misdemeanor—penalty. Every corporation or joint-stock company or individual, which shall violate any of the provisions of this act, shall be guilty of a misdemeanor, and upon conviction thereof shall be punished by a fine of not less than one hundred dollars nor more than one thousand dollars.

History: En. Sec. 33, Ch. 171, L. 1917;
re-en. Sec. 2709, R. C. M. 1921.

Collateral References

Electricity  21.

29 C.J.S. Electricity § 76.

24-134. (2710) Date for act to take effect. This act shall go into effect on the first day of May, 1917, from which time all new construction shall conform to the provisions hereof, and all betterments on existing plants and equipment shall be made to conform to the provisions of this act.

History: En. Sec. 34, Ch. 171, L. 1917;
re-en. Sec. 2710, R. C. M. 1921.

24-135. (2711) Repealing clause. All acts or parts of acts, and all ordinances or parts of ordinances, of cities and towns in the state of Montana, in conflict with this act, are hereby repealed, and hereafter no ordinance in conflict with any provisions of this act shall be enacted or passed in any city or town in the state of Montana.

History: En. Sec. 35, Ch. 171, L. 1917;
re-en. Sec. 2711, R. C. M. 1921.

24-136. (2711.1) Moving of structures—interference with electric wires. No person, firm or corporation moving, hauling or transporting any house, building, derrick or other structure shall cut, move, raise or in any manner interfere with an electric light or electric power wire or poles, or with telephone or telegraph wires, cables, messenger wires, guy wires, or poles, without giving notice to the owner or agent of said wires or poles, as hereinafter provided.

History: En. Sec. 1, Ch. 55, L. 1929;
amd. Sec. 1, Ch. 174, L. 1937; amd. Sec.
14, Ch. 137, L. 1941.

Collateral References
Electricity \Rightarrow 20.
29 C.J.S. Electricity § 74.

24-137. (2711.2) Notice, when and how given. The person, firm or corporation moving any house, building, derrick or other structure shall give to the person, firm or corporation owning or operating such wire or poles at their nearest office, and also at their principal office within the state, not less than three days' written notice of the time and place, when and where the removal of said poles or the cutting, raising, moving or otherwise interfering with said poles or wires will be necessary.

History: En. Sec. 2, Ch. 55, L. 1929.

24-138. (2711.3) Duties of the owner in such case. It shall then be the duty of any person, firm or corporation owning or operating said poles or wires after service of notice, as required by section 24-137, to furnish competent workmen or linemen to remove such poles, or raise or cut such wires as will be necessary to facilitate removing such house, building, derrick or other structure.

No person, firm or corporation engaged in moving any house, building, derrick or other structure shall raise, cut, or in any way interfere with any such poles or wires, unless the persons or authorities owning or having control of the same shall refuse so to do after having been notified, as required by section 24-137; then, only competent and experienced workmen or linemen shall be employed in such work, and in such case the necessary and reasonable expense shall be paid by the owners of the poles and wires handled, and the work shall be done in a careful and workmanlike manner, and the said poles and wires shall be promptly replaced and the damages thereto promptly repaired.

Provided, however, that any person, firm or corporation engaged in moving such structure within the limits of any city or town shall pay all necessary and reasonable expense of raising or cutting such wires or removing such poles.

History: En. Sec. 3, Ch. 55, L. 1929;
amd. Sec. 1, Ch. 55, L. 1951.

24-139. (2711.4) Interference with lines. It shall be unlawful for any person, firm or corporation engaged as principal or employee in moving any house, building, derrick or other structure, as provided in the above sections, to move, touch, cut, molest or in any way interfere with any electric light, electric power, telephone or telegraph wires, cables, messenger wires, or guy wires, or any poles bearing any such wires, except in compliance with the provisions of this act.

History: En. Sec. 4, Ch. 55, L. 1929; amd. Sec. 2, Ch. 174, L. 1937; amd. Sec. 15, Ch. 137, L. 1941.

Cross-Reference

Interference with or injury to electric lines, penalty, secs. 94-3203, 94-3209.

Collateral References

Electricity 20.

29 C.J.S. Electricity §§ 74, 75.

Right of public utility not having an exclusive franchise to protection against, or damages for, interference with its operations, property, or plant by a competitor. 119 ALR 432.

Municipality's liability for damage by fall of trees or limbs on electric wires. 14 ALR 2d 210.

24-140. Repealing clause—exception. All acts and parts of acts in conflict herewith are hereby repealed but nothing herein contained shall be construed to repeal sections 24-142 to 24-144.

History: En. Sec. 16, Ch. 137, L. 1941.

24-141. Scope of act. Nothing in this act shall be construed as applying to any electrical construction of any person using such construction for power wires, where such construction and wires and the power plant furnishing electricity therefor are wholly owned by such person, and the electricity conducted thereby is produced and used solely by such person on his own premises, and not sold or delivered to any other person off his premises, and where the wires or construction are not upon or do not cross any highway or public place, or the property of others, and where such wires carry less than two hundred fifty (250) volts of electricity.

History: En. Sec. 18, Ch. 137, L. 1941.

24-142. Regulation of electrical construction by rural electrification associations. From and after the passage of this act all electrical construction conducted, and to be operated by any rural electrification association and constructed, and to be operated in pursuance of the authority of the rural electrification administration of the federal government, within the state of Montana shall be in conformity with the rules and regulations set forth in the national electrical safety code approved by the American engineering standards committee as published by the department of commerce of the United States and any and all revisions thereof as the same may exist from time to time; provided, however, that where Y-connected circuits with neutral conductors effectively grounded throughout their length are used, minimum vertical clearance of wires or neutral conductors over ground or rails shall be determined by the voltage between wires and ground, if such voltage does not exceed fifteen thousand (15,000) volts.

History: En. Sec. 1, Ch. 194, L. 1939; amd. Sec. 1, Ch. 139, L. 1951.

29 C.J.S. Electricity § 41.

See generally 18 Am. Jur. 403, Electricity.

Collateral References

Electricity 14(1).

24-143. Adoption of national electrical safety code. The provisions of the national electrical safety code, as designated in section 24-142, wherever the same may be in conflict with or in any manner contravene the provisions of this chapter, shall be deemed and construed as superseding, amending and modifying the provisions of this chapter insofar as the provisions thereof conflict with the provisions of the national electrical safety code; provided that the provisions of this section shall apply only to electrical construction conducted and operated in pursuance of the authority of the rural electrification administration of the federal government.

History: En. Sec. 2, Ch. 194, L. 1939.

Collateral References.

Electricity ~~§~~ 14(1).

29 C.J.S. Electricity § 41.

24-144. Violation of act a misdemeanor—penalty. Every person, firm or corporation which shall violate any provisions of this act shall be guilty of a misdemeanor.

History: En. Sec. 3, Ch. 194, L. 1939.

TITLE 25

FEES AND SALARIES

- Chapter 1. Fees of state officers, 25-101 to 25-113.
2. Fees of county officers, 25-201 to 25-237.
3. Fees and salaries of justices of the peace and constables, 25-301 to 25-309.
4. Jurors' and witnesses' fees, 25-401 to 25-414.
5. Salaries of state officers, deputies and employees, 25-501 to 25-509.
6. Salaries of county officers, deputies and employees, 25-601 to 25-611.1.
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CHAPTER 1

FEES OF STATE OFFICERS

- Section 25-101. Fees of secretary of state and state auditor.
25-102. Fees of secretary of state.
25-103. Fee for filing articles of incorporation of foreign corporations.
25-104. Report of capital stock and assets.
25-105. Determination of proportion of capital stock employed in state.
25-106. Additional filing fee required on showing of report, when.
25-107. Figuring fee on corporation having stock of no par value.
25-108. Forfeiture of right to do business for failure to pay fee or file statement.
25-109. Application of act.
25-110. Water users' association exempt from payment of fees.
25-111. Fees of clerk of supreme court.
25-112. Fees of notaries public.
25-113. Fees of commissioner of deeds.

25-101. (4912) Fees of secretary of state and state auditor. The fees of public officers in the state are as follows, which must be charged and collected for the use of the state and counties, respectively:

Secretary of State.

The fees of the secretary of state are specified in the following section of this code.

State Auditor.

For filing and examination of the first application of any insurance company doing business as prescribed in sections 40-1401 to 40-1432, and issuing the license thereon, fifty dollars.

For filing each annual statement, as provided in the foregoing chapter, twenty-five dollars.

For each certificate of authority provided in said chapter, two dollars.

For license fee for assessment of life insurance companies, as prescribed in section 40-2011, one hundred dollars.

For filing annual statement, as prescribed in section 40-2012, twenty-five dollars.

For making the certificate mentioned in section 40-2009, in addition to the necessary expenses incurred, ten dollars.

For copy of every paper filed or recorded in his office, twenty cents per folio.

For certificate and seal, fifty cents.

For filing any papers not otherwise provided for, twenty-five cents.

History: En. Sec. 4630, Pol. C. 1895; re-en. Sec. 3163, Rev. C. 1907; re-en. Sec. 4912, R. C. M. 1921.

matters. Therefore the salaries and fees of officers will often be found in the law pertaining to a particular office.

NOTE.—It is impossible to assemble in a single title all the laws on a subject like fees and salaries, since they are frequently found in sections which relate to other

Collateral References

States—59.

81 C.J.S. States § 92.

25-102. (145) Fees of secretary of state. The secretary of state, for services performed in his office, must charge and collect the following fees:

1. For each copy of any law, resolution or record or other document or paper on file in his office, twenty cents per folio.
2. For affixing certificate and seal, one dollar.
3. For issuing each certificate of incorporation and each certificate of increase of capital stock, three dollars.

4. For recording and filing each certificate of incorporation and each certificate of increase of capital stock, the following amounts shall be charged:

Amounts up to one hundred thousand dollars, one dollar per thousand dollars.

Additional from one hundred thousand dollars, to two hundred and fifty thousand dollars, eighty cents per thousand dollars.

Additional from two hundred and fifty thousand dollars to five hundred thousand dollars, sixty cents per thousand dollars.

Additional from five hundred thousand dollars to one million dollars, forty cents per thousand dollars.

Additional over one million dollars, twenty cents per thousand dollars.

Providing, that no fee for filing any articles of incorporation or increase of capital stock shall be less than fifty dollars except those enumerated in the next subdivision, which do not have capital stock and are not organized for the purpose of profit.

5. For all services in connection with the issuance of certificate, filing and recording of each of the following, whether foreign or domestic, twenty dollars: religious societies, churches, organizations for religious purposes, hospitals, lyceums, musical and scientific societies, libraries, benevolent and fraternal societies, social clubs, agricultural societies, stock growers' associations, grazing associations and other associations of like character, including local, independent and subordinate organizations, as well as state, supervisory, governing and grand organizations, and bodies of any such associations, societies or orders, or for the purpose of establishing public or private charities, or both. Provided, however, that the above enumerated organizations do not have capital stock and are not organized for the purpose of profit.

6. For issuing each certificate of decrease of capital stock, ten dollars.

7. For recording and filing each certificate of decrease of capital stock, five dollars.

8. For issuing each certificate of continuance of corporate existence, ten dollars.

9. For recording and filing each certificate of continuance of corporate existence, the following amounts shall be charged:

Amounts up to one hundred thousand dollars, fifty cents per thousand dollars.

Additional from one hundred thousand dollars to two hundred and fifty thousand dollars, forty cents per thousand dollars.

Additional from two hundred and fifty thousand dollars to five hundred thousand dollars, thirty cents per thousand dollars.

Additional from five hundred thousand dollars to one million dollars, twenty cents per thousand dollars.

Additional over one million dollars, ten cents per thousand dollars.

10. For recording and filing each notice of removal of place of business, each certificate of change of name, or each certificate making capital stock assessable, five dollars.

11. For filing each notice of appointment of agent, five dollars.

12. For filing each annual or semi-annual statement of any foreign corporation, five dollars.

13. For receiving and recording each official bond, five dollars.

14. For each commission or other document, signed by the governor, and attested by the secretary of state (pardon and military commissions excepted), five dollars.

15. For searching the records and archives of the state, one dollar.

16. For filing each trade mark, five dollars; and for issuing each certificate of record, one dollar.

17. For recording miscellaneous papers, records, or other documents, for filing, one dollar; for recording, twenty cents per folio.

18. For filing any other paper not otherwise herein provided for, one dollar for filing and twenty cents per folio for recording. When a copy of any law, resolution or record or other document or paper on file in the office of the secretary of state is presented for comparison and certification, five cents per folio must be charged and collected for proof-reading the same. That no member of the legislative assembly, or state or county officer, can be charged for any search relative to matters appertaining to the duties of his office; nor must he be charged any fee for a certified copy of any law or resolution passed by the legislative assembly relative to his official duties. Fees must be collected in advance, and when collected by the secretary of state, must be paid to the state treasurer at the end of each quarter, as provided in the constitution.

History: Ap. p. Sec. 410, Pol. C. 1895; amd. Sec. 1, p. 47, L. 1899; amd. Sec. 1, Ch. 127, L. 1903; amd. Sec. 1, Ch. 74, L. 1905; re-en. Sec. 165, Rev. C. 1907; amd. Sec. 1, Ch. 91, L. 1921; re-en. Sec. 145, R. C. M. 1921; amd. Sec. 1, Ch. 50, L. 1935. Cal. Pol. C. Sec. 416.

Changing Capital Stock from Par Value to Nonpar Value

Held, that in the absence of provision of law authorizing the organization of corporations in this state with capital stock of nonpar value, and in view of section 25-102, which requires the secre-

tary of state to collect a fee for filing incorporation papers based upon the amount of its authorized capital stock, a writ of mandate to compel him to file a proposed amendment of the articles of incorporation of a domestic corporation changing its capital stock from a par value of \$1.00 to shares without a par value does not lie. *Barnett Iron Works, Inc. v. Harmon*, 87 M 38, 42, 285 P 191.

Increase of Capital Stock

The fact that the trustees of a corporation may have increased the capital stock of the company immediately after its in-

corporation for the purpose of evading the provisions of this section authorizing a fee of fifty cents on each one thousand dollars of the capital stock, upon the filing of the certificate of incorporation, does not warrant the secretary of state in refusing to file such certificate of increase. State ex rel. Home B. & L. A. v. Rotwitt, 17 M 537, 539, 43 P 922.

Where each of two foreign corporations, upon entering the state to transact business, had paid the full legal fees for filing its articles of incorporation, and subsequently the former absorbed the latter and increased its capital stock, the certificate presented to the secretary of state showing an increase of capital stock, the secretary was not required to deduct the amount of the capital stock of the absorbed corporation, upon which the fees have once been paid, from the amount shown by the certificate of increase, but properly charged a fee based upon the difference between its former capitalization and the present one. United Missouri River Power Co. v. Yoder, 41 M 245, 248, 108 P 912.

License Tax

The fee demanded by this section is not a property tax; it is graduated according to the par value of the company's capital stock, without reference to the full cash value of the property owned by the corporation; and it does not become a lien

upon any property which the corporation may have in the state, as does a property tax under section 84-3807. State ex rel. General Electric Co. v. Alderson, 49 M 29, 32, 33, 140 P 82.

Id. The fee fixed by this section, based on the amount of capital stock, for the recording and filing of certificates of incorporation in the office of the secretary of state, is not a property tax but a license tax exacted of every corporation, domestic as well as foreign, engaged in intrastate business, for the privilege of doing business within the state, enjoying the protection of its laws, and the pecuniary advantages afforded by its markets.

References

Cited or applied as section 410, Political Code, before amendment, in State ex rel. Aachen & Munich F. Ins. Co. v. Rotwitt, 17 M 41, 43, 41 P 1004; State ex rel. Travelers' Ins. Co. v. Rotwitt, 18 M 87, 89, 44 P 409; as section 165, Revised Codes, in State ex rel. Cascade Bank v. Yoder, 39 M 202, 208, 103 P 499; as modified, in Wells Fargo & Co. v. Harrington, 54 M 235, 244, 169 P 463; Atlantic Refining Co. v. Virginia, 302 U S 22, 29, 82 L Ed 24, 58 S Ct 75; Great Western Sugar Co. v. Mitchell, 119 M 328, 174 P 2d 817.

Collateral References

States⁵⁸.
81 C.J.S. States § 89.

25-103. (145.1) Fee for filing articles of incorporation of foreign corporations. That every foreign corporation required by law to file in the office of the secretary of state a certified copy of its charter or articles of incorporation shall pay to the secretary of state for the filing thereof as follows:

Upon the proportion of its capital stock then or thereafter to be represented by its property and business in Montana at the rate of one dollar (\$1.00) per thousand dollars (\$1,000.00) for the first one hundred thousand dollars (\$100,000.00); at the rate of eighty cents (80c) per thousand dollars (\$1,000.00) for any additional from one hundred thousand dollars (\$100,000.00) to two hundred fifty thousand dollars (\$250,000.00); at the rate of sixty cents (60c) per thousand dollars (\$1,000.00) for any additional from two hundred fifty thousand dollars (\$250,000.00) to five hundred thousand dollars (\$500,000.00); at the rate of forty cents (40c) per thousand dollars (\$1,000.00) for any additional from five hundred thousand dollars (\$500,000.00) to one million dollars (\$1,000,000.00); and at the rate of twenty cents (20c) per thousand dollars (\$1,000.00) for any additional over one million dollars (\$1,000,000.00), provided, however, that no fee for filing shall be less than fifty dollars (\$50.00).

History: En. Sec. 1, Ch. 169, L. 1931.

References

Great Western Sugar Co. v. Mitchell, 119 M 328, 174 P 2d 817, 820.

Collateral References

Corporations⁶⁴⁴.
20 C.J.S. Corporations § 1814.

25-104. (145.2) Report of capital stock and assets. Every foreign corporation which is required by law to file in the office of the secretary of state a certified copy of its charter or articles of incorporation shall annually and between the first days of January and March of each year file in said office a report verified by the oath of its president, vice-president, or secretary, stating the proportion of its capital stock represented in the state of Montana by its property located and business transacted therein during the preceding year.

History: En. Sec. 2, Ch. 169, L. 1931.

Powers of Noncomplying Corporation

The fact that corporation does not comply with this section and has ceased to do business does not prevent it from redeeming its property sold at delinquent tax sale. *Stensvad v. Ottman*, 123 M 158, 208 P 2d 507, 512.

References

Great Western Sugar Co. v. Mitchell, 119 M 328, 174 P 2d 817, 820.

Collateral References

Corporations ¶649.
20 C.J.S. Corporations § 1819.

25-105. (145.3) Determination of proportion of capital stock employed in state. In determining the proportion of capital stock employed in this state the same shall be computed by taking the gross business in dollars of the corporation in the state for the preceding year and adding the same to the full value in dollars of the property of the corporation located in the state and by taking the total gross business in dollars of the corporation, both within and without the state for the preceding year, and adding thereto the full value in dollars of the entire property of the corporation both within and without the state and by then dividing the total value in dollars of the business and property in the state by the total value in dollars of all the business and property of the corporation, the quotient thus obtained to be taken as the percentage of the capital stock represented by the business and property within the state. The secretary of state may demand as a condition to the filing of such report a statement verified by the president, vice-president or secretary of such foreign corporation, showing in detail the information required for the making of the calculation aforesaid, which statement when so demanded shall be attached to and filed with such report.

History: En. Sec. 3, Ch. 169, L. 1931.

References

Great Western Sugar Co. v. Mitchell, 119 M 328, 174 P 2d 817, 820.

25-106. (145.4) Additional filing fee required on showing of report, when. Whenever such report shall show a greater proportion of the capital stock of such foreign corporation represented by its property and business in Montana than that upon which the fee for filing the charter or articles of incorporation was based, such foreign corporation at the time of filing such report, shall pay such additional fee as it would have been required to pay for filing if such fee had been calculated on the basis of the proportion of the capital stock represented by its business and property in Montana as shown by such report.

History: En. Sec. 4, Ch. 169, L. 1931.

Operation and Effect

Although this section is not without ambiguity, when considered with the

history of the legislation and in order to give effect to the evident legislative intent, held that rates provided in the chapter enacting this section apply as against contention that other statutes

applied. *Great Western Sugar Co. v. Mitchell*, 119 M 328, 174 P 2d 817, 821.

Collateral References
Corporations◊644.
20 C.J.S. Corporations § 1814.

25-107. (145.5) Figuring fee on corporation having stock of no par value. If a foreign corporation has capital stock of no par value, the value of its shares, for the purpose of determining the amount of fees to be paid hereunder, shall be determined upon the clear present market value of said shares; provided, however, that if the clear present market value of said shares is not readily ascertainable, then the shares shall be considered to be of the value as shown by the books of account of the corporation.

History: En. Sec. 5, Ch. 169, L. 1931.

Collateral References

References

Great Western Sugar Co. v. Mitchell, 119 M 328, 174 P 2d 817, 820.

Fees on corporate stock without par value. 36 ALR 791, 794.

25-108. (145.6) Forfeiture of right to do business for failure to pay fee or file statement. If any foreign corporation shall fail to file such annual report, or to pay such additional fee or shall file a false report, it shall forfeit its right to do business in this state.

History: En. Sec. 6, Ch. 169, L. 1931.

Collateral References

References

Great Western Sugar Co. v. Mitchell, 119 M 328, 174 P 2d 817, 820; *Hutterian Brethren of Wolf Creek v. Haas*, 116 F Supp 37.

Corporations◊651.
20 C.J.S. Corporations § 1843.

25-109. (145.7) Application of act. The provisions of this act shall not apply to corporations which entered Montana for the transaction of business prior to February 27, 1915.

History: En. Sec. 7-A, Ch. 169, L. 1931.

Collateral References

References

Great Western Sugar Co. v. Mitchell, 119 M 328, 174 P 2d 817, 820.

Corporations◊644.
20 C.J.S. Corporations § 1814.

25-110. (147) Water users' association exempt from payment of fees. Any water users' association, organized in conformity with the requirements of the laws of the United States and of the state of Montana, under the reclamation act of June 17, 1902, which, under the articles of incorporation, is authorized to furnish water only to its stockholders, shall be exempt from the payment of any incorporation tax and from the payment of any annual franchise tax, and upon filing its articles of incorporation with the secretary of state, shall be required to pay only a fee of ten dollars for the filing and recording of such articles of incorporation, and the issuance of certificate of incorporation.

History: En. Sec. 1, Ch. 66, L. 1905; re-en. Sec. 167, Rev. C. 1907; re-en. Sec. 147, R. C. M. 1921.

Collateral References

Waters and Water Courses◊238.
67 C.J. Waters § 999.

25-111. (4913) Fees of clerk of supreme court. The fees of the clerk of the supreme court are specified in section 82-503 of this code, and salary in section 82-506.

History: En. Sec. 4631, Pol. C. 1895; re-en. Sec. 3164, Rev. C. 1907; re-en. Sec. 4913, R. C. M. 1921.

Collateral References

Clerks of Courts 11 et seq.
14 C.J.S. Clerks of Courts § 9 et seq.

25-112. (4914) Fees of notaries public. For drawing, copying, and recording each and every protest for the nonpayment of a promissory note, or for the nonpayment or nonacceptance of a bill of exchange, order, draft, or check, one dollar.

For drawing and serving every notice of nonpayment of a promissory note, or of the nonpayment or nonacceptance of a bill of exchange, order, draft, or check, twenty-five cents.

For drawing an affidavit, deposition, or other paper for which provision is not herein made, for each folio, unless otherwise prescribed, twenty cents.

For taking an acknowledgment or proof of a deed or other instrument, to include the seal and the writing of the certificate, for the first signature, one dollar.

For each additional signature, fifty cents.

For administering an oath or affirmation, twenty-five cents.

For certifying an affidavit, with or without seal, including oath, fifty cents.

Provided, the maximum fee that can be computed or charged for drawing, copying, and recording a protest, and for drawing and serving the notices of nonpayment or nonacceptance, shall be two dollars and fifty cents.

History: En. Sec. 1, Ch. 44, L. 1907; Sec. 3165, Rev. C. 1907; re-en. Sec. 4914, R. C. M. 1921.

by statute for attaching his certificate and administering the oaths, and not to the additional sum of twenty cents per folio for transcribing the testimony allowed by this section. *Coleman v. Northern Pacific Ry. Co.*, 41 M 123, 125, 108 P 582.

Operation and Effect

A notary public who, in taking depositions, made use of a stenographer employed for that purpose by the party at whose instance they were being taken, and who merely swore the witnesses and attached his certificate to each deposition, was entitled only to the fees prescribed

Collateral References

Notaries 3.
66 C.J.S. Notaries § 14.

25-113. (4915) Fees of commissioner of deeds. The fees of commissioner of deeds are the same as those prescribed for a notary public.

History: En. Sec. 4633, Pol. C. 1895; re-en. Sec. 3166, Rev. C. 1907; re-en. Sec. 4915, R. C. M. 1921.

Collateral References

Registers of Deeds 3.
76 C.J.S. Registers of Deeds § 13.

CHAPTER 2

FEES OF COUNTY OFFICERS

- Section 25-201. Disposal of fees collected by county officers.
25-202. What officers to receive fees for their own use.
25-203. Fees must be paid into county treasury, when.
25-204. Statement and affidavit of fees collected.
25-205. Treasurer to file affidavits and statements.
25-206. Payment of salary not to be made until statement and report filed.
25-207. Board not to allow compensation of deputies until affidavit filed.
25-208. Fees must be paid in advance.
25-209. No fees to be charged state, county or public officer.
25-210. Fees for naturalization.
25-211. Officer must give itemized receipt.

- 25-212. Must keep statement posted in his office.
- 25-213. Officer must not receive any other fees than those named.
- 25-214. May demand fees for publication of notice.
- 25-215. Meaning of term "folio."
- 25-216. Mileage—how computed.
- 25-217. Same.
- 25-218. Witnesses on behalf of state or county.
- 25-219. Certificate of clerk to witness.
- 25-220. Preceding sections construed.
- 25-221. Officers to complete the business of their offices.
- 25-222. Penalty for false oath.
- 25-223. Penalty for failure to pay over fees.
- 25-224. Penalty for making false report.
- 25-225. Penalty for sheriff falsely representing his mileage.
- 25-226. Fees of sheriff.
- 25-227. Fees for board of prisoners.
- 25-228. Duration of act.
- 25-229. Sheriff falsely representing his expenses for boarding prisoners.
- 25-230. Board of county commissioners to declare office vacant, when.
- 25-231. Fees of county clerks.
- 25-232. Fees of clerk of district court.
- 25-233. Fees of clerk in probate proceedings.
- 25-234. Fees of county treasurer for tax deed.
- 25-235. Fees of county surveyor.
- 25-236. Fees of coroner.
- 25-237. Fees of public administrator.

25-201. (4864) Disposal of fees collected by county officers. No county officer shall receive for his own use, any fees, penalties or emoluments of any kind, except the salary as provided by law, for any official service rendered by him, but all fees, penalties and emoluments of every kind must be collected by him for the sole use of the county and must be accounted for and paid to the county treasurer as provided by section 25-203 of this code and shall be credited to the general fund of the county.

History: En. Sec. 4591, Pol. C. 1895; re-en. Sec. 3112, Rev. C. 1907; re-en. Sec. 4864, R. C. M. 1921; amd. Sec. 3, Ch. 141, L. 1925.

treasurer, and they become a part of the public moneys of the county. *Hauser v. Miller*, 37 M 22, 25, 94 P 197.

Cross-Reference

Report of fees by county officers, secs. 16-2423 to 16-2427.

Operation and Effect

The fees of the clerk in probate proceedings, exacted under section 25-233, must be paid by him to the county

References

Cited or applied as section 4591, Political Code, in *Hogan v. Cascade County*, 36 M 183, 186, 92 P 529; *State v. Hale*, 126 M 326, 249 P 2d 495.

Collateral References

Counties—80(1).
20 C.J.S. Counties § 148.

25-202. (4865) What officers to receive fees for their own use. The county surveyor, coroner, public administrator, justice of the peace, and constable may collect and receive for their own use, respectively, for official services, the fees and emoluments prescribed in this chapter. All other county officers receive salaries.

History: En. Sec. 4592, Pol. C. 1895; re-en. Sec. 3113, Rev. C. 1907; re-en. Sec. 4865, R. C. M. 1921.

Operation and Effect

The last sentence in this section is unnecessary, unless its purpose is to advise the people that salaried officers are not to have "fees and emoluments" other than salaries from the state or county.

Scharrenbroich v. Lewis and Clark County, 33 M 250, 257, 83 P 482.

In this section the term "fees" means a mode of compensation different from salary. *State v. Story*, 53 M 573, 578, 165 P 748.

Collateral References

Counties—71 and other specific topics.
20 C.J.S. Counties § 112.

25-203. (4887) **Fees must be paid into county treasury, when.** All salaried officers of the several counties must charge and collect for the use of their respective counties, and pay into the county treasury on the first Monday in each month, all the fees now or hereafter allowed by law, paid or chargeable in all cases, except as provided in section 93-8627; provided, however, that nothing in this section shall be held to apply to the compensation received by the sheriff as mileage while in the performance of official duties, or for the board of prisoners or other persons while in his custody.

History: En. Sec. 4606, Pol. C. 1895; re-en. Sec. 3139, Rev. C. 1907; re-en. Sec. 4887, R. C. M. 1921.

Operation and Effect

The term "fees," as used in this section, imports specific charges to be collected from private individuals for particular services. State v. Story, 53 M 573, 578, 165 P 748.

References

State v. District Court, 62 M 600, 601, 205 P 955; Crow Creek Irr. Dist. v. Crittenden, 71 M 66, 68, 227 P 63.

Collateral References

Counties 80(1).
20 C.J.S. Counties § 148.

25-204. (4888) **Statement and affidavit of fees collected.** The fees and compensation collected and chargeable for the use of the county in each month must be paid to the county treasurer on the first Monday of the following month, and must be accompanied by a statement and copy of the fee book for the preceeding month, duly verified by the officer making such payment. The affidavit must be in the following form:

State of Montana, }
County of } ss.

I,, of the county of, do swear that the fee book in my office contains a true statement in detail of all fees and compensations of every kind and nature for official services rendered by me, paid or chargeable, or by my deputies or assistants, for the month of, A. D. 19...., and that said fee book shows the full amount received or chargeable in said month, and since my last monthly payment; and neither myself, nor, to my knowledge or belief, any of my deputies or assistants, have rendered any official services, except for the county or state, which is not fully set out in said fee book; and that the foregoing statement thereof is a full, true, and correct copy thereof. Subscribed and sworn to before me this day of, 19....

History: En. Sec. 4607, Pol. C. 1895; re-en. Sec. 3140, Rev. C. 1907; re-en. Sec. 4888, R. C. M. 1921.

Operation and Effect

The term "fees," as used in this sec-

tion, imports specific charges to be collected from private individuals for particular services. State v. Story, 53 M 573, 578, 165 P 748.

25-205. (4889) **Treasurer to file affidavits and statements.** The treasurer must file and preserve in his office said statements and affidavits, and must issue to the officer one original and one duplicate receipt therefor, and the officer receiving said receipts must preserve one in his office and file the duplicate with the county clerk, whereupon the clerk must charge the treasurer with the amount shown by the receipt.

History: En. Sec. 4608, Pol. C. 1895; re-en. Sec. 3141, Rev. C. 1907; re-en. Sec. 4889, R. C. M. 1921.

25-206. (4890) Payment of salary not to be made until statement and report filed. The board of county commissioners must not order the payment of the salary of any such officer until he has filed the duplicate receipt with the county clerk, properly signed by the treasurer, showing that he has made the statement and settlement for that month, required in this chapter, and filed the report prescribed in section 16-2423.

History: En. Sec. 4609, Pol. C. 1895;
re-en. Sec. 3142, Rev. C. 1907; re-en. Sec.
4890, R. C. M. 1921.

Collateral References
Counties \Rightarrow 75(4).
20 C.J.S. Counties § 125.

25-207. (4891) Board not to allow compensation of deputies until affidavit filed. The board must not order the payment of the compensation of any deputy until he has signed and filed with the county clerk the following affidavit:

State of Montana, }
County of } ss.

I do swear that I have rendered services as deputy for the month of, 19...., and that I am entitled to receive the full sum of my compensation for the same for my own use and benefit, and that I have not paid, deposited, or assigned, nor contracted to pay, deposit, or assign any part of such compensation for the use of any other person, nor in any way, directly or indirectly, paid or given, nor contracted to pay or give, any reward or compensation for my appointment to office, or the emoluments thereof, to my principal or to any other person.

Subscribed and sworn to before me this day of, 19....

History: En. Sec. 4610, Pol. C. 1895;
re-en. Sec. 3143, Rev. C. 1907; re-en. Sec.
4891, R. C. M. 1921.

because of illness, he could not, by mandamus force payment of his salary for those three months. State ex rel. Rusch v. Board of County Commrs., 121 M 162, 191 P 2d 670, 673.

Salary for Time Not Served

Where deputy did not serve three months

25-208. (4892) Fees must be paid in advance. The officers mentioned in this chapter must not, in any case, perform any official services unless the fees prescribed for such services are paid in advance, and on such payment the officers must perform the services required. For every failure or refusal to perform official duty when the fees are tendered, the officer is liable on his official bond.

History: En. Sec. 4611, Pol. C. 1895;
re-en. Sec. 3144, Rev. C. 1907; re-en. Sec.
4892, R. C. M. 1921.

The provisions of this section are controlled by section 16-2915, whereby the county clerk may, but is not required to, demand prepayment of filing or other fees. Minneapolis Steel & Machinery Co. v. Thomas, 54 M 132, 135, 168 P 40.

Operation and Effect

The term "fees," as used in this section imports specific charges to be collected from private individuals for particular services. State v. Story, 53 M 573, 578, 165 P 748.

Collateral References
Counties \Rightarrow 79.
20 C.J.S. Counties § 125.

25-209. (4893) No fees to be charged state, county or public officer. No fees must be charged the state, or any county, or any subdivision thereof, or any public officer acting therefor, or in habeas corpus proceedings

for official services rendered, and all such services must be performed without the payment of fees.

History: En. Sec. 4612, Pol. C. 1895; re-en. Sec. 3145, Rev. C. 1907; re-en. Sec. 4893, R. C. M. 1921.

Operation and Effect

The term "fees," as used in this section imports specific charges to be collected from private individuals for particular services. State v. Story, 53 M 573, 578, 165 P 748.

Held that an irrigation district created under chapter 146, Laws of 1909 (89-1201 et seq.), is a public corporation exercising essential governmental functions, one of which is the right to levy taxes, organized for the government of a portion of the state and for the promotion of the public welfare, and as such must be

deemed a subdivision of the state within the meaning of this section relieving it, as such subdivision, from the payment of fees for the recordation of papers in the county clerk and recorder's office. Crow Creek Irr. Dist. v. Crittenden, 71 M 66, 68, 227 P 63.

References

Thaanum v. Bynum Irr. Dist., 72 M 221, 225, 232 P 528; Buffalo Rapids Irr. Dist. v. Collieran, 85 M 466, 476, 279 P 369.

Collateral References

Counties 77; Habeas Corpus 116.
20 C.J.S. Counties § 112; 39 C.J.S. Habeas Corpus § 106.

25-210. (4894) Fees for naturalization. The clerk of the district court shall collect from every person to whom a final certificate of naturalization is issued, at the time the same is issued, a fee of two dollars and fifty cents; and no other fee shall be charged for naturalization papers, or for the record thereof.

History: En. Sec. 1, p. 50, L. 1899; re-en. Sec. 3146, Rev. C. 1907; re-en. Sec. 4894, R. C. M. 1921.

Collateral References

Clerks of Courts 21.
14 C.J.S. Clerks of Courts § 16.

25-211. (4895) Officer must give itemized receipt. Every officer, upon receiving any fees for official duty or service, may be required by the person paying the same to make out in writing, and deliver to such person, a particular account of such fees, specifying for what they accrued, respectively, and must receipt the same; and if he refuse or neglect so to do when required, he is liable to the party paying the same in treble the amount so paid.

History: En. Sec. 4614, Pol. C. 1895; re-en. Sec. 3147, Rev. C. 1907; re-en. Sec. 4895, R. C. M. 1921.

lected from private individuals for particular services. State v. Story, 53 M 573, 578, 165 P 748.

Operation and Effect

The term "fees," as used in this section imports specific charges to be col-

Collateral References

Counties 79.
20 C.J.S. Counties § 127.

25-212. (4896) Must keep statement posted in his office. It is the duty of each officer entitled to collect fees to keep posted in his office a plain and legible statement of the fees allowed by law; a failure so to do subjects the officer to a fine of one hundred dollars and costs, to be recovered by the county attorney in the name of the state.

History: En. Sec. 4615, Pol. C. 1895; re-en. Sec. 3148, Rev. C. 1907; re-en. Sec. 4896, R. C. M. 1921.

tion imports specific charges to be collected from private individuals for particular services. State v. Story, 53 M 573, 578, 165 P 748.

Operation and Effect

The term "fees," as used in this sec-

25-213. (4897) Officer must not receive any other fees than those named. The officers above named must receive no other fees for any serv-

ices performed by them in any action or proceeding, or for the performance of any service for which fees are allowed; and in case of any violation of the provisions of this chapter, the party demanding or receiving any fees not herein allowed is liable to refund the same to the party aggrieved, with treble the amounts as damages, besides costs of suit.

History: En. Sec. 4616, Pol. C. 1895; re-en. Sec. 3149, Rev. C. 1907; re-en. Sec. 4897, R. C. M. 1921.

Operation and Effect

A civil suit to recover illegal fees, which had been demanded and received under color of office, can be brought against an officer who has not been convicted in a criminal action. *Ming v. Truett*, 1 M 322, 327.

The term "fees," as used in this section imports specific charges to be collected from private individuals for particular services. *State v. Story*, 53 M 573, 578, 165 P 748.

Collateral References

Counties⇒77.

20 C.J.S. Counties § 112.

25-214. (4898) May demand fees for publication of notice. When, by law, any publication is required to be made by an officer of any suit, process, notice, order, or other paper, the costs of the same must be first tendered by the party, if demanded, for whom such order of publication was granted, before the officer is compelled to make such publication.

History: En. Sec. 4617, Pol. C. 1895; re-en. Sec. 3150, Rev. C. 1907; re-en. Sec. 4898, R. C. M. 1921.

Collateral References

Costs⇒274.

20 C.J.S. Costs § 146.

25-215. (4899) Meaning of term "folio." The term "folio," when used as a measure for computing fees, means one hundred words, counting every two figures, necessarily used, as a word. Any portion of a folio, when in the whole paper there is not a complete folio, and when there is an excess over the last folio exceeding one-half, may be computed as a folio.

History: En. Sec. 4618, Pol. C. 1895; re-en. Sec. 3151, Rev. C. 1907; re-en. Sec. 4899, R. C. M. 1921.

References

Shelley v. Normile, 109 M 117, 123, 94 P 2d 206.

Operation and Effect

The term "fees," as used in this section, refers to costs of publications. *State v. Story*, 53 M 573, 578, 165 P 748.

Collateral References

Counties⇒77.

20 C.J.S. Counties § 112.

25-216. (4900) Mileage—how computed. When any sheriff, constable, or coroner serves more than one process in the same cause, not requiring more than one journey from his office, he shall receive mileage only for the more distant service, and no mileage in any case must be allowed for less than one mile actually traveled.

History: En. Sec. 4619, Pol. C. 1895; re-en. Sec. 3152, Rev. C. 1907; re-en. Sec. 4900, R. C. M. 1921.

Collateral References

Coroners⇒7; Sheriffs and Constables⇒61.

18 C.J.S. Coroners § 28; 80 C.J.S. Sheriffs and Constables § 251.

25-217. (4901) Same. Wherever mileage is allowed to any sheriff or other officer, juror, witness, or other person, under any law of Montana, the same shall be computed according to the shortest traveled route, when such shortest route is passable.

History: En. Sec. 1, Ch. 7, L. 1919; re-en. Sec. 4901, R. C. M. 1921.

50 C.J.S. Juries § 207; 80 C.J.S. Sheriffs and Constables § 251; 70 C.J. Witnesses § 90.

Collateral References

Jury ⚡ 77(1); Sheriffs and Constables ⚡ 61; Witnesses ⚡ 29.

25-218. (4902) Witnesses on behalf of state or county. The attorney general or any county attorney is authorized to cause subpoenas to be issued, and compel the attendance of witnesses on behalf of the state or county, without paying or tendering fees in advance to either officers or witnesses; and any witness refusing to or failing to attend, after being served with a subpoena, may be proceeded against, and is liable in the same manner as is provided by law in other cases where fees have been tendered or paid.

History: En. Sec. 4620, Pol. C. 1895; re-en. Sec. 3153, Rev. C. 1907; re-en. Sec. 4902, R. C. M. 1921.

Collateral References

Witnesses ⚡ 14.
70 C.J. Witnesses § 43.

References

Cited or applied as section 3153, Revised Codes, in *Griggs v. Glass*, 58 M 476, 479, 193 P 564.

25-219. (4903) Certificate of clerk to witness. The clerk of any court before which any witness shall have attended on behalf of the state or county, in any civil action, must give to such witness a certificate, under seal, of travel and attendance, which shall entitle him to receive the amount therein stated from the state or county treasurer.

History: En. Sec. 4621, Pol. C. 1895; re-en. Sec. 3154, Rev. C. 1907; re-en. Sec. 4903, R. C. M. 1921.

cates; the clerk must observe the same formalities in issuing them.

Operation and Effect

This section does not require the certificates to be addressed to the treasurer; his duty requires him to pay upon their presentation. *County of Silver Bow v. Davies*, 40 M 418, 425, 107 P 81.

Id. The rule applicable to jurors' certificates applies also to witnesses' certifi-

References

Cited or applied as section 3154, Revised Codes, in *Griggs v. Glass*, 58 M 476, 480, 193 P 564; *Helena Adjustment Co. v. Claflin*, 75 M 317, 326, 243 P 1063.

Collateral References

Witnesses ⚡ 29.
70 C.J. Witnesses § 90 et seq.

25-220. (4904) Preceding sections construed. The provisions of the two preceding sections of this chapter shall extend to all actions and proceedings brought in the name of the attorney general, or any other person or persons, for the benefit of the state or county.

History: En. Sec. 4622, Pol. C. 1895; re-en. Sec. 3155, Rev. C. 1907; re-en. Sec. 4904, R. C. M. 1921.

References

Cited or applied as section 3155, Revised Codes, in *Griggs v. Glass*, 58 M 476, 480, 193 P 564.

25-221. (4905) Officers to complete the business of their offices. It is the duty of all officers to complete the business of their respective offices to the time of the expiration of their respective terms; and in case any officer, at the close of his term, leaves to his successor official labor to be performed, for which he has received compensation, or which it was his duty to perform, he is liable to pay to his successor the full value of such services, which may be recovered in any court of competent jurisdiction, upon action brought against him on his official bond.

History: En. Sec. 4623, Pol. C. 1895;
re-en. Sec. 3156, Rev. C. 1907; re-en. Sec.
4905, R. C. M. 1921.

Collateral References
Officers↪94.
67 C.J.S. Officers § 83.

25-222. (4906) Penalty for false oath. Every person who takes a false oath, under the provisions of this chapter, is punishable as provided in section 94-3801.

History: En. Sec. 4624, Pol. C. 1895;
re-en. Sec. 3157, Rev. C. 1907; re-en. Sec.
4906, R. C. M. 1921.

Collateral References
Perjury↪9.
70 C.J.S. Perjury § 20 et seq.

25-223. (4907) Penalty for failure to pay over fees. Every officer who fails or refuses to pay over any fees collected by him to the county treasurer, or fails to collect the same, as provided by this chapter, is punishable as provided in section 94-1502.

History: En. Sec. 4625, Pol. C. 1895;
re-en. Sec. 3158, Rev. C. 1907; re-en. Sec.
4907, R. C. M. 1921.

Collateral References
Counties↪102.
20 C.J.S. Counties § 146.

25-224. (4908) Penalty for making false report. Every officer who makes a false report of the fees received by him is guilty of a felony and punishable as provided in section 94-115.

History: En. Sec. 4626, Pol. C. 1895;
re-en. Sec. 3159, Rev. C. 1907; re-en. Sec.
4908, R. C. M. 1921.

25-225. (4909) Penalty for sheriff falsely representing his mileage. Every sheriff who falsely represents to the board of county commissioners or board of examiners his actual traveling expenses in the performance of any official duty, or causes to be paid to him from the state or any county treasury a sum exceeding his actual expenses in the performance of such duty, is punishable as provided in sections 94-115 and 94-1517.

History: En. Sec. 4627, Pol. C. 1895;
re-en. Sec. 3160, Rev. C. 1907; re-en. Sec.
4909, R. C. M. 1921.

Collateral References
Sheriffs and Constables↪153.
80 C.J.S. Sheriffs and Constables §§ 209,
210.

25-226. (4916) Fees of sheriff. (1) For the service of summons and complaint on each defendant, one dollar (\$1.00);

For levying and serving each writ of attachment of execution on real or personal property, one dollar (\$1.00);

For service of attachment on the body or order of arrest on each defendant, one dollar (\$1.00);

For the service of affidavit, order, and undertaking in claim and delivery, one dollar (\$1.00);

For serving a subpoena, twenty-five cents (25c) for each witness summoned;

For serving writ of possession or restitution, two dollars (\$2.00);

For trial of the right of property or damages, including all services except mileage, three dollars (\$3.00);

For taking bond or undertaking in any case authorized by law, one dollar (\$1.00);

For serving every notice, rule or order, one dollar (\$1.00), for each person served;

For copy of any writ, process or other paper when demanded or required by law, twenty cents (20c) for each folio;

For advertising any property for sale on execution or under any judgment or order of sale, exclusive of cost of publication, one dollar (\$1.00);

(2) For the expense in taking and keeping possession of and preserving property under attachment, execution or other process, such sum as the court or judge may order, not to exceed the actual expense incurred, and no keeper must receive to exceed five dollars (\$5.00) per day and no keeper must be employed without an order of court, nor must he be so employed unless the property is of such character as to need the personal attention and supervision of a keeper. No property shall be placed in charge of a keeper if it can be safely and securely stored, or where there is no reasonable danger of loss.

(3) In addition to the fees above specified, the sheriff shall receive for each mile actually traveled, in serving any writ, process, order or other paper, including a warrant of arrest, or in conveying a person under arrest before a magistrate or to jail, only his actual expenses when such travel is made by railroad, and when travel is other than by railroad he shall receive nine cents (9c) per mile for each mile actually traveled by him both going and returning, and the actual expenses incurred by him in conveying a person under arrest before a magistrate or to jail, and he shall receive the same mileage and his actual expenses for the person conveyed or transported under order of court within the county, the same to be in full payment for transporting and dieting such persons during such transportation; provided that where more than one person is transported by the sheriff or when one or more papers are served on the same trip made for the transportation of one or more prisoners, but one mileage shall be charged.

(4) Provided further, that this act shall not apply to the delivery of prisoners at the state prison or at the reform school, or insane persons to the state insane asylum, for which he shall receive the actual expense incurred as provided by section 16-2723 of this code. Nor shall this act apply to trips made for the return of fugitives apprehended and arrested outside the county for which the sheriff shall receive the actual necessary expenses incurred in going for and returning with such fugitive, provided that in determining the actual expense, if travel be by a privately owned vehicle, the mileage rate shall be allowed as herein provided. But no mileage must be allowed on an attachment, order of arrest, order for delivery of personal property, or any other order, notice or paper, when the same accompanies the summons, and the service thereof may be made at the time of the service of the summons, unless for the distance actually traveled beyond that required to serve the summons. When two or more papers are served on the same person at the same time, or when any paper or papers are served on more than one person on the same trip, but one mileage must be allowed or charged, and in the service of subpoenas, but one mileage must be charged when the persons named therein live in the same place or in the same direction, but mileage must be charged for the longest distance actually traveled. Any writ, order or other paper for service, must be received at any place in the county where a sheriff or a deputy is found, and mileage must be computed from such place, but if papers are delivered

for service away from the county seat, all necessary copies thereof must be furnished for service. When two or more officers travel in the same automobile in the discharge of any duty but one mileage shall be allowed.

History: En. Sec. 4634, Pol. C. 1895; re-en. Sec. 3167, Rev. C. 1907; amd. Sec. 1, Ch. 111, L. 1919; re-en. Sec. 4916, R. C. M. 1921; amd. Sec. 1, Ch. 111, L. 1927; amd. Sec. 1, Ch. 89, L. 1929; amd. Sec. 1, Ch. 121, L. 1933; amd. Sec. 1, Ch. 139, L. 1937; amd. Sec. 4, Ch. 121, L. 1941; amd. Sec. 2, Ch. 59, L. 1949.

Operation and Effect

The term "fees," as used in this section refers to the sheriff's mileage as well as his other charges. *State v. Story*, 53 M 573, 578, 165 P 748.

Under this section the necessity for the appointment of a keeper of attached property is a question to be determined by the trial court, taking into consideration all facts and circumstances, and on appeal defendant debtor may not complain for the first time that the appointment was unnecessary and improper and that the expense had been unnecessarily incurred. *Chowning v. Madison Land & Irrigation Co.*, 84 M 494, 499, 276 P 946.

25-227. (4886) Fees for board of prisoners. The fees allowed sheriffs of the several counties of the state for the board of prisoners confined in jail under their charge shall be at the rate of one dollar and seventy-five cents (\$1.75) per day for each of said prisoners, when the number of prisoners shall be twenty (20) or less each day. When the number of prisoners per day shall exceed twenty (20) and be less than thirty (30) then at the rate of one dollar and fifty cents (\$1.50) per day for each of said prisoners in excess of twenty (20) per day. When the number of prisoners per day shall exceed twenty-nine (29) and be less than forty (40), then at the rate of one dollar and twenty-five cents (\$1.25) per day for each and all of said prisoners in excess of twenty-nine (29); and when the number of prisoners per day shall exceed thirty-nine (39), then at the rate of one dollar (\$1.00) per day for each of said prisoners in excess of thirty-nine (39); provided the term "per day" shall mean a twenty-four (24) hour period in which at least one substantial meal has been served to such prisoner.

History: En. Sec. 4605, Pol. C. 1895; re-en. Sec. 3138, Rev. C. 1907; amd. Sec. 1, Ch. 81, L. 1919; re-en. Sec. 4886, R. C. M. 1921; amd. Sec. 1, Ch. 77, L. 1943; amd. Sec. 1, Ch. 103, L. 1949; amd. Sec. 1, Ch. 131, L. 1951.

Operation and Effect

The term "fees," as used in this section, designates the recompense payable by the county for boarding prisoners. *State v. Story*, 53 M 573, 578, 165 P 748.

This section, limiting the fees of the sheriff for the board of prisoners to a certain amount per day for each prisoner,

References

Cited or applied as section 4634, Political Code, before amendment, in *Jurgens v. Hauser*, 19 M 184, 185, 47 P 809; *Wade v. Lewis and Clark County*, 24 M 335, 339, 61 P 879; as section 3167, Revised Codes, in *Daly v. Kelley*, 57 M 306, 187 P 1022; *Brannin v. Sweet Grass Co.*, 88 M 412, 416, 293 P 970; *Letz v. Letz*, 123 M 494, 215 P 2d 534; *Engle v. Pfister*, 127 M 65, 257 P 2d 561, 562.

Collateral References

Sheriffs and Constables—28 et seq.
80 C.J.S. *Sheriffs and Constables* §§ 215, 218.

47 Am. Jur. 886, *Sheriffs, Police and Constables*, §§ 96 et seq.

Right, in absence of express statute, of one governmental unit, or officers thereof, to compensation for collecting or disbursing special taxes or assessments levied by or owed to another governmental unit. 114 ALR 1098.

has reference to prisoners confined by state authority and not to federal prisoners. *Majors v. County of Lewis and Clark*, 60 M 608, 616, 201 P 268.

Held, that while the word "board" may include both room rent and meals, as used in this section, fixing the fee allowable to a sheriff for "board of prisoners" confined in the county jail, means food or meals only, since under section 16-2804, counties must provide for a county jail with a sufficient number of rooms to accommodate the prisoners confined therein. *Pacific Coal Co. v. Silver Bow County*, 79 M 323, 324 et seq., 256 P 386.

Id. The fee allowed to sheriffs by this section for board of prisoners confined in the county jail covers the total amount of the county's liability for that purpose; hence a charge for fuel for preparing the food was properly disallowed by the board of county commissioners.

Collateral References

Prisons \hookrightarrow 18(2).
72 C.J.S. Prisons § 25.

25-228. Duration of act. This act shall be in full force and effect from and after its passage and approval, and shall remain in force during the war and for a period of six (6) months thereafter, and not longer.

History: En. Sec. 3, Ch. 77, L. 1943.

25-229. (4910) Sheriff falsely representing his expenses for boarding prisoners. Every sheriff who falsely represents to the board of county commissioners the actual expenses of boarding prisoners, or for furnishing food and supplies therefor, or for any service rendered in connection therewith, or presents to said board false items in a claim or false vouchers, or makes any profit whatever out of the board or keeping of prisoners in his custody, and every person who gives a false item or false voucher to be used by such sheriff in any claim against the county before such board, is punishable as provided in sections 94-115 and 94-1517.

History: En. Sec. 4628, Pol. C. 1895;
re-en. Sec. 3161, Rev. C. 1907; re-en. Sec.
4910, R. C. M. 1921.

25-230. (4911) Board of county commissioners to declare office vacant, when. The board of county commissioners, upon receiving a certified copy of the record of conviction of any officer for receiving illegal fees, or where the officer collects fees and fails to account for the same, upon proof thereof, must declare his office vacant and appoint his successor.

History: En. Sec. 4629, Pol. C. 1895;
re-en. Sec. 3162, Rev. C. 1907; re-en. Sec.
4911, R. C. M. 1921.

Collateral References

Counties \hookrightarrow 65.
20 C.J.S. Counties § 107.

25-231. (4917) Fees of county clerks. The fees of county clerks, which must be charged and collected for the use of their respective counties, are as follows:

For recording and indexing each instrument of writing allowed by law to be recorded; except as hereinafter provided;

For first folio, thirty cents (30c) and for each subsequent folio or fraction thereof, fifteen cents (15c);

For each entry in index, ten cents (10c);

For certificate that such instrument has been recorded with seal affixed, fifty cents (50c);

For recording and indexing each real estate mortgage, assignment, renewal, or release of real estate mortgage;

For each folio, twenty cents (20c);

For each entry in index, ten cents (10c);

For certificate that such mortgage, assignment or release has been recorded with seal affixed, fifty cents (50c);

For recording and indexing each certificate of location of quartz or placer mining claim, millsite claim, or notice of appropriation of water,

including certificate that such instrument has been recorded with seal affixed, two dollars (\$2.00);

For recording and indexing each affidavit of annual labor on mining claim, including certificate that such instrument has been recorded with seal affixed, one dollar (\$1.00) for the first mining claim in said affidavit, and twenty-five cents (25c) for each additional mining claim described and included therein;

For filing and indexing each chattel mortgage, affidavit of renewal of chattel or real estate mortgage, assignment or release of chattel mortgage, a writ of attachment, execution, certificate of sale, lien, or other instrument required by law to be filed and indexed, fifty cents (50c);

For filing and indexing each certificate of incorporation or annual statement of any corporation, one dollar (\$1.00).

For recording and platting each town site or map:

For each lot up to and including one hundred, twenty-five cents (25c);

For each additional lot in excess of one hundred, five cents (5c);

For recording the field notes of survey of any town site, per folio, twenty-five cents (25c).

Provided that in all cases where recording is done by photographic or similar process the fee to be charged by the county clerk and recorder for filing and indexing the same shall be one dollar (\$1.00) for each page or fraction thereof of said instrument.

For a copy of any record or paper, for each folio, fifteen cents (15c) and for each certification with seal affixed, fifty cents (50c); provided, that in all cases where copies of any record or paper are to be certified by the county clerk and such copy is furnished to said clerk for certification, said clerk shall not make a charge nor receive a fee for the comparison of such copy, other than the fee of fifty cents (50c) for his certificate and seal.

For searching any index record of files of the office, for each year when required, in abstracting or otherwise, fifteen cents (15c);

For each entry of discharge or satisfaction of mortgage, lien, or other instrument on the margin of record thereof, or upon the original instrument, and noting same in the indexes concerned, twenty-five cents (25c);

For administering an oath with certificate and seal he shall make no charge.

For taking and certifying an acknowledgment, with seal affixed, for signature thereto he shall make no charge.

For filing or recording or indexing any other instrument not herein expressly provided for, the same fee as hereinbefore provided for a similar service.

On each instrument delivered to him for recording, it shall be the duty of the county clerk to endorse thereon all charges made by him for such service and such endorsement shall be recorded as a part of the instrument in his office in order that the state examiner may verify such charges from time to time and may see that they have been properly entered on the fee book or reception record in the county clerk's office.

History: En. Sec. 4635, Pol. C. 1895; C. M. 1921; amd. Sec. 1, Ch. 87, L. 1941; re-en. Sec. 3168, Rev. C. 1907; amd. Sec. amd. Sec. 1, Ch. 90, L. 1953; amd. Sec. 1, Ch. 117, L. 1911; re-en. Sec. 4917, R. Ch. 202, L. 1955.

Cross-Reference

Fees for recording and indexing papers concerning cooperative marketing act, sec. 14-429.

Collateral References

Counties \Rightarrow 74(2).
20 C.J.S. Counties § 117.

25-232. (4918) Fees of clerk of district court. At the commencement of each action or proceeding, the clerk must collect from the plaintiff the sum of five dollars, and for filing a complaint in intervention the clerk must collect from the intervenor the sum of five dollars;

And the defendant, on his appearance, must pay the sum of two dollars and fifty cents (which includes all the fees to be paid up to the entry of judgment).

On the entry of judgment in favor of plaintiff, he must pay the additional sum of two dollars and fifty cents;

And if in favor of defendant, the defendant must pay the sum of five dollars (which includes all the clerk's costs for all services rendered in any action or proceeding, except issuing execution or order of sale, and the fees for transcript on appeal. If the action is dismissed, no fee for the entry of judgment need be paid, unless the party desires the entry of such judgment).

For filing the papers and transcript on appeal from a justice or other inferior court or other tribunal, the party appealing must pay the sum of five dollars (which includes all costs up to the entry of judgment).

For entry of judgment in favor of party appealing, he must pay the sum of two dollars and fifty cents.

For entry of judgment in favor of the other party, or respondent, he must pay the sum of five dollars (which includes all the clerk's costs for all services rendered on such appeal).

For certifying transcripts on appeal, where the same are not prepared by him, five dollars, and in addition thereto, five cents per page for each page in excess of two hundred pages.

And where he prepares such transcript, in addition thereto, per folio, fifteen cents.

For preparing copies of papers in his office, per folio, fifteen cents, when certified to, in addition thereto, fifty cents for certificate and seal.

For certificate with seal, fifty cents.

For oath and jurat, with seal, fifty cents.

For administering oath, twenty-five cents.

For taking depositions, per folio, twenty cents.

For filing and docketing transcript of judgment from all other courts and issuing execution thereon, two dollars and fifty cents.

For issuing execution and all services connected therewith, one dollar.

For issuing execution or order of sale on foreclosure of liens, one dollar.

And in addition per folio, twenty cents.

For searching records of files for each year, except for suitors or their attorneys, twenty-five cents.

For transmission of records or files or transfer of cases to other courts, two dollars and fifty cents.

For filing and entering papers on transfer from other courts, five dollars.

For making, acknowledging, and procuring the signature of judge to deed of lot in town site, four dollars.

For issuing a marriage license, two dollars.

History: En. Sec. 4636, Pol. C. 1895; re-en. Sec. 3169, Rev. C. 1907; amd. Sec. 1, Ch. 88, L. 1917; re-en. Sec. 4918, R. C. M. 1921.

Operation and Effect

As this section makes no provision for the collection of a fee for making a transcript in special proceedings, such a fee is not a necessary disbursement, and the clerk is not authorized to collect the same. State ex rel. Baker v. Second Judicial District Court, 24 M 425, 427, 62 P 688; State ex rel. Healy v. District Court, 26 M 224, 226, 68 P 470. But see State ex rel. Hall v. District Court et al., 111 M 619, 115 P 92.

Transcripts on appeal may be prepared by the parties or their counsel, but the

authentication must be made by the clerk, after comparison of them with the original files, by his certificate under the seal of the district court. Shadville v. Barker, 26 M 45, 49, 66 P 496, 761.

References

Cited and applied as section 4636, Political Code, before amendment, in Montana etc. Co. v. Boston etc. Min. Co., 33 M 400, 403, 84 P 706; State ex rel. Doyle v. District Court, 126 M 615, 245 P 382.

Collateral References

Clerks of Courts—11 et seq.
14 C.J.S. Clerks of Courts § 9.

Liability of clerk of court or his bond for money paid into his hands by virtue of his office. 59 ALR 60.

25-233. (4919) Fees of clerk in probate proceedings. At the time of filing the petition for letters testamentary, of administration, or guardianship, the clerk must collect from the petitioner the sum of five dollars.

For admitting a will to probate and all services connected therewith, in addition to the above, there must be paid to the clerk the sum of five dollars.

If a will is contested, the contestant must pay to the clerk, on filing his grounds of opposition, the sum of five dollars.

And on the entry of judgment thereon, the prevailing party must pay the sum of two dollars and fifty cents.

On filing a petition to determine heirship or title to an estate, the petitioner must pay to the clerk the sum of five dollars.

On entry of judgment thereon, the prevailing party must pay the sum of two dollars and fifty cents.

History: En. Sec. 4637, Pol. C. 1895; re-en. Sec. 3170, Rev. C. 1907; re-en. Sec. 4919, R. C. M. 1921.

NOTE.—So much of the above section as was declared unconstitutional has been omitted from this code. See Hauser v. Miller, 37 M 22, 94 P 197.

References

Cited or applied as section 4637, Political Code, in Hauser v. Miller, 37 M 22, 23, 94 P 197.

Collateral References

Clerks of Courts—11, 20.
20 C.J.S. Clerks of Courts §§ 9, 16.

25-234. (4920) Fees of county treasurer for tax deed. The county treasurer shall receive, for making and acknowledging a deed for property sold for delinquent taxes, the sum of three dollars.

History: En. Sec. 1, p. 49, L. 1899; re-en. Sec. 3171, Rev. C. 1907; re-en. Sec. 4920, R. C. M. 1921.

Collateral References

Counties—74(3).
20 C.J.S. Counties § 119.

25-235. (4921) Fees of county surveyor. The county surveyor is entitled to receive and collect for his own use the following fees:

For services in making a survey required by any court, or if made for the county by order of the board of county commissioners, the sum of twelve (\$12.00) dollars for each working day and with travel expenses

while away from home in the performance of the duties of his office, to be paid out of the contingent fund.

For copies and certificates, per folio, twenty cents (20c).

For copy of any plat of survey, two dollars (\$2.00).

Expenses of chainmen and markers, if furnished by the surveyor, not to exceed per day, eight (\$8.00) dollars.

History: En. Sec. 4639, Pol. C. 1895; re-en. Sec. 3172, Rev. C. 1907; re-en. Sec. 4921, R. C. M. 1921; amd. Sec. 1, Ch. 199, L. 1953.

Operation and Effect

The term "fees," as used in this section, refers to the per diem of the county surveyor, to his charges for copies, etc., and to his expenses for chainmen and markers, whether chargeable to the county or to private individuals. State v. Story, 53 M 573, 578, 165 P 748.

References

Cited or applied as section 4639, Political Code, in Wight v. Board of Commrs. of Meagher County, 16 M 479, 483, 41 P 271; State ex rel. Donyes v. Board of County Commrs. of Granite County, 23 M 250, 253, 58 P 439; as section 3172, Revised Codes, in State ex rel. Payne v. District Court, 53 M 350, 353, 165 P 294; Hicks v. Stillwater County, 84 M 38, 47, 274 P 296; Durland v. Prickett et al., 98 M 399, 39 P 2d 652.

Collateral References

Counties \Rightarrow 74(5).
20 C.J.S. Counties § 118.

25-236. (4922) Fees of coroner. The coroner is entitled to receive and collect for his own use the following fees:

For each day or fraction of day engaged in making an investigation relative to a death, whether an inquest is later held or not, the sum of five dollars (\$5.00), provided that not more than one day's fees shall be charged for making an investigation in any one case, except in counties of the first, second and third class;

For each day or fraction of day engaged in holding an inquest, five dollars (\$5.00), provided that not more than two days' fees shall be charged for holding an inquest in any one case;

For subpoenaing each witness, including copy of subpoena, thirty cents (30c);

For summoning each juror, including copy of summons, thirty cents (30c);

For each oath administered, five cents (5c);

For making transcript of testimony, per folio, fifteen cents (15c);

For each mile actually traveled in the performance of any duty, seven cents (7c);

For filing papers, each five cents (5c);

The total amount of fees allowed by the board of county commissioners to a coroner, except when acting as sheriff, must not exceed twenty-one hundred dollars (\$2100.00) in any one year, including compensation paid all clerks, stenographers and other clerical assistants employed by him, provided the coroner in a county having a population of forty-five thousand (45,000) or more, according to the latest federal census enumeration, may, at the discretion of the county commissioners receive a salary of not to exceed three thousand seven hundred fifty dollars (\$3,750.00) per year and mileage as above provided in lieu of all fees above mentioned, and all clerical and stenographic help except as provided in section 16-3408, shall be included in such salary. Said population to be based on the latest United States census.

A justice of the peace, acting as coroner, is allowed the same fees as the coroner, and no more.

If acting as sheriff, the coroner is allowed the same fees as sheriff or constable for like services.

History: En. Sec. 4640, Pol. C. 1895; re-en. Sec. 3173, Rev. C. 1907; re-en. Sec. 4922, R. C. M. 1921; amd. Sec. 1, Ch. 59, L. 1933; amd. Sec. 1, Ch. 9, L. 1937; amd. Sec. 1, Ch. 211, L. 1951.

Operation and Effect

The word "fees," as used in this section, refers to the per diem and other charges of the coroner which are payable by the county. State v. Story, 53 M 573, 578, 165 P 748.

References

Cited or applied as section 3173, Revised Codes, in State ex rel. Payne v. District Court, 53 M 350, 353, 165 P 294.

Collateral References

Coroners \hookrightarrow 7.

18 C.J.S. Coroners § 28.

25-237. (4923) Fees of public administrator. The public administrator is allowed to receive and collect for his own use, for services rendered, the same fees as are allowed executors and administrators, as provided in section 91-3407.

History: En. Sec. 4641, Pol. C. 1895; re-en. Sec. 3174, Rev. C. 1907; re-en. Sec. 4923, R. C. M. 1921.

Collateral References

Executors and Administrators \hookrightarrow 24, 488.

34 C.J.S. Executors and Administrators §§ 852, 1050.

CHAPTER 3

FEES AND SALARIES OF JUSTICES OF THE PEACE AND CONSTABLES

- Section 25-301. Fees of justices of the peace in civil actions.
 25-302. Fees, when payable.
 25-303. Fees of justices of the peace in criminal actions.
 25-304. Miscellaneous fees.
 25-305. Justices may retain fees, when.
 25-306. Salaries of justices of the peace in certain townships—hours—quarters.
 25-307. Collection and disposition of fees in townships of ten thousand and upwards—itemized statement.
 25-308. Penalty for violation of law.
 25-309. Fees of constable.

25-301. (4924) Fees of justices of the peace in civil actions. The following is the schedule of fees which must be collected by justices of the peace in every civil action introduced in a justice court:

Two dollars and fifty cents when summons is issued, to be paid by the plaintiff.

Two dollars and fifty cents when issue is joined, to be paid by the defendant.

Two dollars and fifty cents of the prevailing party when judgment is rendered. In cases where judgment is entered by default, no charge except the two dollars and fifty cents for the issuance of summons shall be made for any services, including issuing and return of execution.

Two dollars and fifty cents for all services in an action where judgment is rendered by confession.

Two dollars and fifty cents for filing notice of appeal and transcript on appeal, justifying and approving undertaking on appeal, and transmitting papers to the district court with certificate.

History: Ap. p. Sec. 4642, Pol. C. 1895; and as Sec. 1, Ch. 52, L. 1903; re-en. Secs. 3175-3176, Rev. C. 1907; superseded by Sec. 1, Ch. 55, L. 1921; re-en. Sec. 4924, R. C. M. 1921.

Collateral References

Justices of the Peace⇒16.
51 C.J.S. Justices of the Peace § 15.

25-302. (4925) Fees, when payable. All fees must be paid in advance, and no costs shall be included in any judgment until they have been paid; provided, however, that nothing herein contained shall restrict or prevent the bringing of suits in forma pauperis as provided by law.

History: Ap. p. Sec. 4642, Pol. C. 1895; and as Sec. 1, Ch. 52, L. 1903; re-en. Secs. 3175-3176, Rev. C. 1907; superseded by Sec. 2, Ch. 55, L. 1921; re-en. Sec. 4925, R. C. M. 1921.

Collateral References

Counties⇒79.
20 C.J.S. Counties § 125.

25-303. (4926) Fees of justices of the peace in criminal actions. The following is the schedule of fees which must be collected by justices of the peace in every criminal action instituted in the justice court, to-wit:

For all services rendered as a committing magistrate where examination is waived, two dollars and fifty cents.

For all services rendered as a committing magistrate where a hearing takes place and witnesses are examined, five dollars.

For all services rendered as a magistrate on a hearing on a complaint to bind over a person to keep the peace, two dollars and fifty cents.

For all services rendered where there is a plea of guilty, two dollars and fifty cents.

For all services rendered where there is a trial, five dollars.

For taking, filing, and approving bail bond, including justification, one dollar.

For transmitting papers on appeal, and certificate, including bond and approval, one dollar and fifty cents.

For all services in issuing a search warrant, to be paid by the person demanding same, one dollar.

The total amount of fees allowed by the board of county commissioners to any one justice of the peace in criminal cases must not exceed five hundred dollars in any one year.

History: Ap. p. Sec. 4642, Pol. C. 1895; and as Sec. 1, Ch. 52, L. 1903; re-en. Secs. 3175-3176, Rev. C. 1907; superseded by Sec. 3, Ch. 55, L. 1921; re-en. Sec. 4926, R. C. M. 1921.

Cross-Reference

Fees in speed and traffic offenses, sec. 31-112.

Collateral References

Justices of the Peace⇒16.
51 C.J.S. Justices of the Peace § 15.

25-304. (4927) Miscellaneous fees. The following miscellaneous fees shall also be collected by justices of the peace, to-wit:

For copies of papers on file or docket, per folio, twenty cents.

For taking the acknowledgment of an instrument, for the first name, one dollar.

For each additional name, fifty cents.


For administering oath and jurat, fifty cents.

For all services relating to lost or unclaimed property, as provided by sections 20-410 to 20-412, two dollars.

For performing the marriage ceremony and returning certificate to clerk of the district court, five dollars.

History: Ap. p. Sec. 4642, Pol. C. 1895; and as Sec. 1, Ch. 52, L. 1903; re-en. Secs. 3175-3176, Rev. C. 1907; superseded by Sec. 4, Ch. 55, L. 1921; re-en. Sec. 4927, R. C. M. 1921.

Collateral References

Justices of the Peace  16.
51 C.J.S. Justices of the Peace § 15.

25-305. (4928) Justices may retain fees, when. Justices of the peace shall retain as their compensation the fees herein provided for, save and except in those townships where a stated salary is provided by law to be paid to justices of the peace; provided, however, that in all cases justices of the peace may retain the miscellaneous fees provided for in the preceding section.

History: Ap. p. Sec. 4642, Pol. C. 1895; Sec. 5, Ch. 55, L. 1921; re-en. Sec. 4928, and as Sec. 1, Ch. 52, L. 1903; re-en. Secs. 3175-3176, Rev. C. 1907; superseded by R. C. M. 1921.

25-306. (4929) Salaries of justices of the peace in certain townships—hours—quarters. Justices of the peace in townships having a population of ten thousand (10,000) people and not exceeding fifteen thousand (15,000) people shall each receive a salary of two thousand two hundred dollars (\$2,200.00) per annum; payable monthly from the county treasury; justices of the peace in townships having a population of more than fifteen thousand (15,000) people and not exceeding eighteen thousand (18,000) people shall each receive a salary of two thousand four hundred dollars (\$2,400.00), payable monthly from the county treasury; justices of the peace in townships having a population of more than eighteen thousand (18,000) people and not more than twenty-two thousand (22,000) people, shall each receive a salary of two thousand nine hundred dollars (\$2,900.00), payable monthly from the county treasury; justices of the peace in townships having a population of more than twenty-two thousand people shall each receive a salary of three thousand two hundred dollars (\$3,200.00), payable monthly from the county treasury; and justices of the peace in such townships shall receive no other additional fees or compensation whatever, except that they may receive and keep those fees designated as "miscellaneous fees" by section 25-304 of this code; justices of the peace in townships having a population of less than ten thousand (10,000) people shall receive the fees and emoluments provided under existing laws; justices of the peace in townships having a population of ten thousand (10,000) people and upwards shall keep their offices open for business from 9 o'clock A.M. to 12 o'clock M., and from 1 o'clock P.M. to 5 o'clock P.M. on all judicial days, and at such other hours on judicial days as they may desire; providing, however, the office may be closed from one o'clock P.M. to five o'clock P.M. on Saturdays and such justices shall occupy such quarters as may be furnished and selected for them by the board of county commissioners, and said board may, in its discretion select suitable quarters for such justices and may, in its discretion, pay for same from moneys in the county treasury.

History: En. Sec. 1, Ch. 84, L. 1917; re-en. Sec. 4929, R. C. M. 1921; amd. Sec. 1, Ch. 175, L. 1949; amd. Sec. 1, Ch. 51, L. 1953.

Where Claim for Increased Salary Not Sustained by Evidence

Where a justice of the peace presented his claim to the board of county commis-

sioners for \$500 based on four months salary at \$125 per month on the theory that his township had a population of more than 10,000, the enumeration conducted by persons employed by him, held, that from the evidence neither the board nor the court could have determined that the township contained the necessary inhabitants, judgment of court allowing the claim reversed with directions to enter order affirming action of board of com-

missioners. *Yancey v. Park County*, 111 M 73, 76, 106 P 2d 349.

References

Cline v. Tait, 113 M 475, 484, 129 P 2d 89.

Collateral References

Justices of the Peace ¶15, 20.

51 C.J.S. *Justices of the Peace* §§ 13, 15.

25-307. (4930) Collection and disposition of fees in townships of ten thousand and upwards—itemized statement. Justices of the peace in townships having a population of ten thousand people and upwards shall collect the fees prescribed by law for justices of the peace, except the fees in criminal actions other than for the issuance of search warrants, and shall pay the same into the county treasury of the county wherein they hold such office, on the first day of each month, to be credited to the contingent fund of such county; and shall also file therewith an itemized statement showing all fees received during the preceding month in connection with his office; said statement shall also state that all fees required by law to be paid in connection with matters pending before him as such justice during the preceding month have been paid to him, and by him paid into the county treasury, and listed in said itemized statement, and that he has not received or been promised, nor has any one else received or been promised for him, any other moneys, emolument, or thing whatsoever by virtue of or in connection with his office; and said statement shall be subscribed and sworn to by the justice. This section, however, shall not apply to "miscellaneous fees" excepted by section 25-304, supra.

History: En. Sec. 2, Ch. 84, L. 1917; re-en. Sec. 4930, R. C. M. 1921.

cases." *Opinions of Attorney General*, Vol. 17, Nos. 197 and 305.

NOTE.—This section held impliedly amended by section 24-303 (4926) to the extent of eliminating from section 25-307 the words "except the fees in criminal

Collateral References

Justices of the Peace ¶17.

51 C.J.S. *Justices of the Peace* § 16.

25-308. (4931) Penalty for violation of law. Any justice of the peace violating any of the provisions of this act shall be deemed guilty of a misdemeanor, punishable by a fine not exceeding one thousand dollars, or by imprisonment not exceeding six months in the county jail, or both. He shall also be deemed guilty of malfeasance in office, and, in the discretion of the court, may be removed from office, in which latter case he shall thereafter be disqualified from holding such office.

History: En. Sec. 3, Ch. 84, L. 1917; re-en. Sec. 4931, R. C. M. 1921.

Collateral References

Justices of the Peace ¶30.

51 C.J.S. *Justices of the Peace* § 23.

25-309. (4932) Fees of constable. For serving summons, including copy on each defendant, besides mileage, fifty cents.

For serving subpoena, including copy on each person, besides mileage, twenty cents.

For all services in summoning a jury and taking charge of same, two dollars.

For all services in serving an attachment on property, or levying an execution, or executing an order of arrest, or order for the delivery of personal property, including all copies, one dollar.

For the expense in taking and keeping possession of or preserving property under attachment, execution, or other process, the same fees and upon the same conditions as allowed to the sheriff.

For taking and receiving undertaking in any case in which he is authorized, one dollar.

For serving every notice, rule or order, besides mileage, including copy, one dollar.

For advertising any property for sale under execution, exclusive of costs of publication, one dollar.

For serving writ of possession, besides mileage, two dollars.

For all services in trial of right of property or damages, besides mileage, three dollars.

For commissions for receiving and paying over money on execution or other process where property has been levied on and sold, two per cent; when collected without sale, one per cent.

For mileage, the same as sheriff and under the same conditions.

For executing in duplicate a certificate of sale exclusive of the fee for filing, one dollar.

For drawing and executing a constable's deed, including acknowledgment, three dollars.

For making every arrest in a criminal proceeding, or executing a search-warrant, besides mileage, one dollar and fifty cents.

For all services in summoning and taking charge of a jury, two dollars.

For serving a subpoena, including copy on each person, besides mileage, twenty cents.

For every mile necessarily traveled in executing any warrant, serving subpoena, or taking a person before a magistrate or to jail, the same mileage as in civil actions, and under the same conditions, and in addition, in serving a subpoena or warrant when two or more persons are named in any warrant or subpoena, in the same or different actions in the hands of the officer, and such persons live in the same direction, but one mileage must be charged, as provided for the mileage of sheriffs in civil actions.

When two or more persons are brought before a magistrate or to jail at the same time, or might have been so brought, the officer must be allowed but one mileage.

For conveying a person when under arrest, the actual expense incurred in the transportation of such person must be allowed by the board of county commissioners, but the officer must pay his own expenses out of his mileage.

The total amount of fees allowed in criminal cases by the board of county commissioners must not exceed five hundred dollars (\$500.00) in any one year. The excess must be paid into the contingent fund of the county treasury.

That constables in townships having a population of twelve thousand (12,000) people and not exceeding twenty thousand (20,000) people, shall each receive a salary of \$900.00 per annum, payable monthly from the

county treasury. Constables in townships having a population of more than twenty thousand (20,000) people shall each receive a salary of \$1,500.00 per annum, payable monthly from the county treasury, and constables in such townships where the population is twelve thousand (12,000) people and not more than thirty-five thousand (35,000) people shall receive no other fees for civil suits or criminal actions except mileage in the performance of their duties. Any such fees received by the constables shall be turned over to the county treasurer.

History: En. Sec. 4643, Pol. C. 1895; re-en. Sec. 3177, Rev. C. 1907; re-en. Sec. 4932, R. C. M. 1921; amd. Sec. 1, Ch. 152, L. 1935.

Operation and Effect

The word "fees," as used in this section, refers to the charges of the constable, whether collectible from the county in criminal cases or from individuals in civil actions; it also refers to mileage as among the "fees" of the constable. State v. Story, 53 M 573, 578, 165 P 748.

References

Cited or applied as section 4643, Political Code, in Wade v. Lewis and Clark County, 24 M 335, 339, 61 P 879.

Collateral References

Sheriffs and Constables \S 28 et seq.
80 C.J.S. Sheriffs and Constables \S 215 et seq.

CHAPTER 4

JURORS' AND WITNESSES' FEES

- Section 25-401. Jurors' fees.
25-402. Same—for what time paid.
25-403. Compensation of jurors in courts not of record and at coroner's inquests.
25-404. Witnesses' fees.
25-405. Duties of clerk as to jurors.
25-406. Duties of clerk in reference to witnesses' certificate.
25-407. Statement of clerk to be sent to board of county commissioners.
25-408. Clerk must keep a record of witnesses in criminal actions.
25-409. Witnesses in courts not of record.
25-410. Witnesses in criminal actions or coroner's inquests.
25-411. In civil actions must be paid by party subpoenaing.
25-412. Witness may demand advance payment of fees in civil action.
25-413. Interpreters to be paid as witnesses.
25-414. Expert witnesses.

25-401. (4933) Jurors' fees. Grand and trial jurors shall receive six dollars per day for attendance before any court of record and five cents per mile each way for traveling from and to their residence and county seat. Any juror who is excused from attendance upon his own motion on the first day of his appearance in obedience to notice, or who has been summoned as a special juror and not sworn in the trial of the case, in the discretion of the court, may receive per diem and mileage.

History: En. Sec. 1, Ch. 48, L. 1903; re-en. Sec. 3178, Rev. C. 1907; amd. Sec. 1, Ch. 6, L. 1917; re-en. Sec. 4933; R. C. M. 1921; amd. Sec. 1, Ch. 18, L. 1935; amd. Sec. 1, Ch. 9, L. 1945.

NOTE.—See Sec. 59-801.

References

Cited or applied as section 4644, Polit-

ical Code, before amendment, in Wade v. Lewis and Clark County, 24 M 335, 338, 61 P 879.

Collateral References

Jury \S 77(1).
50 C.J.S. Juries \S 207.

25-402. (4934) **Same—for what time paid.** A juror must be paid for each day's attendance for the term or session for which he was summoned until excused. He must be paid for all Sundays and legal holidays unless he resides within ten miles from the courthouse, and all jurors residing within ten miles from the courthouse at which he is summoned to appear shall receive no compensation for Sundays or legal holidays, or for any days he may have been absent or excused from attending the court.

History: En. Sec. 2, p. 48, L. 1903; Ch. 23, L. 1913; re-en. Sec. 4934, R. C. M. re-en. Sec. 3180, Rev. C. 1907; amd. Sec. 1, 1921.

25-403. (4935) **Compensation of jurors in courts not of record and at coroner's inquests.** Jurors in courts not of record, in both civil and criminal actions, shall receive three dollars (\$3.00) per day, but in civil actions the jury must be paid by the party demanding the jury, and must be taxed as costs against the losing party. Jurors in coroner's inquest shall receive for their services the sum of three dollars (\$3.00) per day.

History: En. Sec. 4647, Pol. C. 1895; re-en. Sec. 3181, Rev. C. 1907; re-en. Sec. 4935, R. C. M. 1921; amd. Sec. 1, Ch. 206, L. 1947.

Operation and Effect

Jurors in courts not of record are not allowed to receive mileage. *Wade v. Lewis and Clark County*, 24 M 335, 339, 61 P 879.

25-404. (4936) **Witnesses' fees.** For attending in any civil or criminal action or proceeding before any court of record, referee, or officer authorized to take depositions, or commissioners to assess damages or otherwise, for each day, three dollars. For mileage in traveling to the place of trial or hearing, each way, for each mile, seven cents; provided, however, that no officer of the United States, the state of Montana, or of any county, incorporated city or town within the limits of the state of Montana shall receive any per diem when testifying in a criminal proceeding, and that no witness shall receive fees in any more than one criminal case on the same day.

History: En. Sec. 4648, Pol. C. 1895; re-en. Sec. 3182, Rev. C. 1907; re-en. Sec. 4936, R. C. M. 1921; amd. Sec. 2, Ch. 18, L. 1935.

Operation and Effect

A party to whom costs are awarded is entitled to mileage of witnesses who appeared and testified, although the record does not show that they were subpoenaed. *McGlaudin v. Wormser*, 28 M 177, 182, 72 P 428. See also *Lynes v. Northern Pac. Ry. Co.*, 43 M 317, 330, 117 P 81.

Although witnesses are not obliged to appear at a trial held out of the county in which they reside unless the distance is less than thirty miles, if such witnesses do appear, and the court finds that their testimony was necessary, they are entitled to mileage the same as witnesses who attend in the usual way. *McGlaudin v. Wormser*, 28 M 177, 182, 72 P 428; *Great Falls Meat Co. v. Jenkins*, 33 M 417, 422, 84 P 74. See also *Lynes v. Northern Pac. Ry. Co.*, 43 M 317, 330, 117 P 81.

The mileage of his witnesses which a successful party to an action may recover,

under this section and section 93-8618, is not limited to travel from and to their place of residence; whether the mileage shall be computed from the place of residence will depend upon the circumstances of each case. *Lynes v. Northern Pac. Ry. Co.*, 43 M 317, 330, 117 P 81.

The mileage of witnesses in civil actions allowed litigants under this section is limited to travel within the state. *Chilcott v. Rea*, 52 M 134, 141, 155 P 1114.

The word "fees" refers to the per diem and mileage of witnesses. *State v. Story*, 53 M 573, 578, 165 P 748.

A material witness who resided outside the county in which the case was tried at a distance greater than thirty miles and voluntarily attended the trial at the request of the prevailing party, and who after his arrival on the day set for trial had to wait for about a week before he was required to testify on account of congestion of court business, was entitled to per diem for the whole time he was in attendance and not only for the day on which he gave his testimony, as well as to mileage, the service of a subpoena not be-

ing a prerequisite to their allowance. *Helena Adjustment Co. v. Clafin*, 75 M 317, 326, 243 P 1063.

An attorney, nonresident of Montana at the time he was subpoenaed as a witness for plaintiff in a suit to set aside a fraudulent default judgment, who had acted as plaintiff's counsel in the action out of which the equitable suit arose but was not representing him therein, held properly entitled to mileage from the state line to the place of trial and return, under this section. *Bullard v. Zimmerman et al.*, 88 M 271, 281, 292 P 730.

References

Cited or applied as section 4648, Political Code, in *Wade v. Lewis and Clark County*, 24 M 335, 339, 61 P 879; as section 3182, Revised Codes, in *Neary v. Northern Pac. Ry. Co.*, 41 M 480, 507, 110 P 266; *Coolidge v. Meagher*, 100 M 172, 182, 46 P 2d 684.

Collateral References

Witnesses—27, 29.

70 C.J. Witnesses §§ 78, 90 et seq.

25-405. (4937) Duties of clerk as to jurors. The clerk must give to each juror, at the time he is excused from further service, a certificate taken from a book containing a stub with a like designation, signed by himself under seal, in which must be stated the name of the juror, the number of days' attendance, the number of miles traveled, and the amount due, and on presentation of such certificate to the county treasurer, the amount specified in the certificate must be paid out of the general fund, and the clerk must make a detailed statement containing a list of the jurors, the amount of fees and mileage earned by each, and file the same with the clerk of the board of county commissioners on the first day of every regular meeting of the board, and no quarterly salary must be paid the clerk until such statement is filed. The board must examine such statement and see that it is correct. The clerk must keep a record of the attendance of jurors and compute the amount due for mileage, and the distance from any point to the county seat must be determined by the shortest traveled route.

History: En. Sec. 4645, Pol. C. 1895; re-en. Sec. 3179, Rev. C. 1907; re-en. Sec. 4937, R. C. M. 1921.

Operation and Effect

This section is mandatory, both as to the duty of the clerk and of the treasurer; for the word "must" indicates that the duty of the clerk becomes imperative as soon as a juror is entitled to his pay. It also indicates that the duty of the treasurer is imperative as soon as a certificate, properly issued by the district court clerk, is presented to him. In *re Farrell*, 36 M 254, 261, 92 P 785. See *County of Silver Bow v. Davies*, 40 M 418, 426, 107 P 81.

A juror's certificate, which does not bear the seal required by this section, is void, and therefore not a subject of forgery. In *re Farrell*, 36 M 254, 266, 92 P 785. See also *County of Silver Bow v. Davies*, 40 M 418, 425, 107 P 81, and *American Bonding Co. v. State Sav. Bank*, 47 M 332, 337, 133 P 367; compare *Choate v. Spencer*, 13 M 127, 132, 32 P 651; *Sharman v. Huot*, 20 M 555, 557, 52 P 558; *Kipp v. Burton*, 29 M 96, 103, 74 P 85.

This section does not require the certificates to be addressed to the treasurer; his duty requires him to pay upon their presentation. *County of Silver Bow v. Davies*, 40 M 418, 425, 107 P 81.

25-406. (4938) Duties of clerk in reference to witnesses' certificate. The witnesses in criminal actions must report their presence to the clerk the first day they attend under the subpoena, and at the time any witness is excused from further attendance the clerk must give to each witness a certificate taken from a book, containing a stub with like designations signed by the clerk, under seal, in which must be stated the name of the witness, the number of days in attendance, the number of miles traveled, and the amount due, and on presentation of such certificate to the county treasurer, the amount specified in the certificate must be paid out of the general fund.

History: En. Sec. 4649, Pol. C. 1895; re-en. Sec. 3183, Rev. C. 1907; re-en. Sec. 4938, R. C. M. 1921.

Operation and Effect

This section does not require the certificates to be addressed to the treasurer; his duty requires him to pay upon their presentation. *County of Silver Bow v. Davies*, 40 M 418, 425, 107 P 81.

Id. The clerk must observe the same

formalities in issuing jurors' certificates as in issuing witnesses' certificates.

References

Cited or applied as section 3183, Revised Codes, in *Griggs v. Glass*, 58 M 476, 480, 193 P 564.

Collateral References

Witnesses ⇨ 32.

70 C.J. Witnesses § 96 et seq.

25-407. (4939) Statement of clerk to be sent to board of county commissioners. The clerk must make a detailed statement containing a list of the witnesses, the amount of fees and mileage earned by each, and file the same with the clerk of the board of county commissioners on the first day of every regular meeting of the board, and no quarterly salary must be paid to the clerk until such statement is filed. The board must examine the statement and see that it is correct.

History: En. Sec. 4650, Pol. C. 1895; re-en. Sec. 3184, Rev. C. 1907; re-en. Sec. 4939, R. C. M. 1921.

Operation and Effect

The word "fees" refers to the per diem and mileage of witnesses. *State v. Story*, 53 M 573, 578, 165 P 748.

25-408. (4940) Clerk must keep a record of witnesses in criminal actions. The clerk must keep a record of the attendance of witnesses in criminal cases, and compute the amount due them for mileage, and the distance from any point to the county seat must be determined by the shortest traveled route.

History: En. Sec. 4651, Pol. C. 1895; re-en. Sec. 3185, Rev. C. 1907; re-en. Sec. 4940, R. C. M. 1921.

may appear that such is not the most convenient route. *State ex rel. McMillan v. Ramsey*, 11 M 245, 246, 28 P 258.

Operation and Effect

Under a former statute it was held that a witness will be allowed mileage only for the shortest route, although it

Collateral References

Clerks of Courts ⇨ 67.

14 C.J.S. Clerks of Courts § 38.

25-409. (4941) Witnesses in courts not of record. Witnesses in courts not of record in civil actions and proceedings shall receive one dollar and fifty cents for each day's actual attendance, and seven cents for each mile actually traveled in going from his residence by the usual traveled route to the said court and return.

History: En. Sec. 3, Ch. 48, L. 1903; re-en. Sec. 3186, Rev. C. 1907; re-en. Sec. 4941, R. C. M. 1921; amd. Sec. 3, Ch. 18, L. 1935.

Collateral References

Witnesses ⇨ 27, 29.

70 C.J. Witnesses §§ 78, 90 et seq.

25-410. (4942) Witnesses in criminal actions or coroner's inquests. Witnesses in courts not of record in criminal actions and on coroner's inquests shall receive one dollar and fifty cents per day for actual attendance, and seven cents per mile for each mile actually and necessarily traveled from his place of residence to the said court and return.

History: En. Sec. 4, Ch. 48, L. 1903; re-en. Sec. 3187, Rev. C. 1907; re-en. Sec. 4942, R. C. M. 1921; amd. Sec. 4, Ch. 18, L. 1935.

25-411. (4943) In civil actions must be paid by party subpoenaing. The fees and compensation of a witness in all civil actions must be paid by the party who caused him to be subpoenaed.

History: En. Sec. 4654, Pol. C. 1895; re-en. Sec. 3188, Rev. C. 1907; re-en. Sec. 4943, R. C. M. 1921.

Collateral References
Witnesses↪30.
70 C.J. Witnesses § 75.

25-412. (4944) Witness may demand advance payment of fees in civil action. No witness shall be obliged to attend court, or before a referee, or any officer authorized to take depositions, or commissioner, when subpoenaed, unless his mileage and fees for one day's attendance are tendered or paid to him on his demanding the same, nor unless his fees for attendance thereafter for each day are tendered or paid to him on demand. The fees of witnesses paid may be taxed as costs against the losing party.

History: En. Sec. 4655, Pol. C. 1895; re-en. Sec. 3189, Rev. C. 1907; re-en. Sec. 4944, R. C. M. 1921; amd. Sec. 1, Ch. 71, L. 1927.

Only One Witness Fee Allowable to One Testifying Once Under Stipulation Determining Three Cases

Where it was stipulated that determination of one of three cases involving the same nature of alleged wrong, but affecting different defendants, should determine

the other two, and the witnesses testified but once, their testimony being used in all three cases, it was error to allow the witnesses fees for all three cases; but one fee should have been allowed to each. McKee v. Clark, 115 M 438, 444, 144 P 2d 1000.

Collateral References

Costs↪184(1); Witnesses↪14.
20 C.J.S. Costs §§ 246, 247; 70 C.J. Witnesses § 43.

25-413. (4946) Interpreters to be paid as witnesses. Interpreters and translators must receive the same fees as witnesses.

History: En. Sec. 4657, Pol. C. 1895; re-en. Sec. 3191, Rev. C. 1907; re-en. Sec. 4946, R. C. M. 1921.

Collateral References

Courts↪56.
21 C.J.S. Courts § 141.

25-414. (4947) Expert witnesses. An expert is a witness and receives the same compensation as a witness.

History: En. Sec. 4658, Pol. C. 1895; re-en. Sec. 3192, Rev. C. 1907; re-en. Sec. 4947, R. C. M. 1921.

Collateral References

Witnesses↪28.
70 C.J. Witnesses § 85 et seq.

CHAPTER 5

SALARIES OF STATE OFFICERS, DEPUTIES AND EMPLOYEES

- Section 25-501. Salary of state officers.
25-502. Salaries of clerk of board of examiners, state accountant and clerk of consolidated boards.
25-503. Salaries of office of state examiner, his assistants, deputies and clerks, and of private secretary to governor.
25-504. Salaries of janitors, watchmen, engineers, carpenter.
25-505. Salaries of other officers.
25-506. Compensation of other officers, where prescribed.
25-507. Salaries of officers, how paid.
25-508. Traveling expenses of officers attending conventions.
25-509. Advancement of money on salaries—public officers.

25-501. Salary of state officers. The annual salaries of the governor, each justice of the supreme court, attorney general, secretary of state, superintendent of public instruction, state treasurer, railroad commissioner and state auditor shall be:

Governor	\$12,500.00
Chief Justice	11,000.00

Justices of the Supreme Court, each.....	11,000.00
Attorney General	9,000.00
Secretary of State	7,500.00
Superintendent of Public Instruction.....	7,500.00
State Treasurer	7,500.00
State Auditor	7,500.00
Clerk of the Supreme Court	6,000.00
Railroad Commissioner	7,500.00

The salary of each such officer shall be for all services required of him or which may hereafter devolve upon him by law, including all services rendered ex officio as a member of any board, commission or committee, but shall not include actual and necessary traveling, lodging and subsistence expenses incidental to his official duties.

History: En. Sec. 1, Ch. 182, L. 1949;
amd. Sec. 1, Ch. 237, L. 1955.

Compiler's Note

This section is substituted for prior section 25-501 (Sec. 1, Ch. 123, L. 1919) which was repealed by Sec. 4, Ch. 182, Laws 1949.

Collateral References

Clerks of Courts↪33; Judges↪22(5);
Schools and School Districts↪47; States
↪60.

14 C.J.S. Clerks of Courts § 24; 48 C.J.S.
Judges § 36; 81 C.J.S. States § 89.

43 Am. Jur. 134, Public Officers, § 340.

25-502. (437) Salaries of clerk of board of examiners, state accountant and clerk of consolidated boards. The annual compensation allowed to the following named state officer and clerks at the state capitol is as follows:

Clerk, three thousand dollars (\$3,000.00); state accountant, four thousand dollars (\$4,000.00). Consolidated boards (board of prison commissioners, insane commissioners, pardon and equalization); clerk, three thousand dollars (\$3,000.00).

History: En. Sec. 1, Ch. 107, L. 1919;
re-en. Sec. 437, R. C. M. 1921; amd. Sec. 2,
Ch. 57, L. 1935.

Collateral References

States↪60.

81 C.J.S. States § 89.

References

State v. Rouleau et al., 68 M 529, 540,
219 P 1096.

25-503. (438) Salaries of office of state examiner, his assistants, deputies and clerks, and of private secretary to governor. The salary of state examiner shall be five thousand four hundred dollars per year. First assistant to the state examiner shall receive three thousand dollars. Second assistant to the state examiner, twenty-seven hundred dollars. Deputy state examiner shall receive twenty-four hundred dollars. Clerks shall receive fifteen hundred dollars, and chief deputy superintendent of banks shall receive three thousand dollars. Each additional deputy allowed by law, twenty-four hundred dollars. Clerks per month, one hundred fifty dollars. And the salary of the private secretary to the governor shall be three thousand dollars.

History: En. Sec. 2, Ch. 107, L. 1919;
re-en. Sec. 438, R. C. M. 1921.

NOTE.—The salary of the state examiner is given as fixed by section 59, chapter 89, Laws of 1927, section 5-605 of these codes; that section also empowers the state examiner, as superintendent of

banks, to fix the salaries of clerks and bank examiners with the approval of the governor.

Collateral References

States↪60, 61.

81 C.J.S. States §§ 89-91.

25-504. (439) Salaries of janitors, watchmen, engineers, carpenter. From and after the passage of this act, the salaries of janitors, watchmen, utility men, engineers, and the carpenter at the state capitol building and the power house of the state capitol building at Helena, Montana, shall be fixed by the board of examiners of the state of Montana in its sound discretion.

History: En. Sec. 1, Ch. 71, L. 1919; re-en. Sec. 439, R. C. M. 1921; amd. Sec. 1, Ch. 124, L. 1925; amd. Sec. 1, Ch. 4, L. 1929; amd. Sec. 1, Ch. 43, L. 1943.

Amendment and Appropriation Bill Harmonized

After amending this section to provide that the state board of examiners fix the salaries of the state capitol building employees, the legislature made appropriation "for salaries fixed by law"; in a proceeding in mandamus to compel approval and payment of salaries for the month of March, 1943, after the operative date of

the amendment, refused on the ground that the salary was not then "fixed by law," held, that the legislature intended the two bills to harmonize and to appropriate funds for the salaries, and omission to do so was an oversight, and the phrase "fixed by law" in the appropriation bill must necessarily be disregarded as surplusage. State ex rel. Ernest Krona v. Holmes, 114 M 372, 375, 136 P 2d 220.

Collateral References

States⁶¹.

81 C.J.S. States § 91.

25-505. (440) Salaries of other officers. The annual compensation allowed to the following named deputy state officers, clerks, stenographers, and employees at the state capitol is as follows:

Office of Governor

Stenographer, fifteen hundred dollars.

Office of Secretary of State

Deputy, three thousand dollars.

(As amended by chapter 151, Laws of 1927.)

Stenographer and recorder, eighteen hundred dollars.

Office of State Treasurer

Deputy, three thousand dollars.

(As amended by chapter 151, Laws of 1927.)

Clerk, twenty-one hundred dollars.

(As amended by chapter 154, Laws of 1919.)

Office of State Auditor

Deputy, three thousand dollars.

(As amended by chapter 151, Laws of 1927.)

Stenographer, twelve hundred dollars.

Bookkeeper, twelve hundred dollars.

Chief clerk, twenty-one hundred dollars.

(As amended by chapter 154, Laws of 1919.)

Superintendent of Public Instruction

Deputy, twenty-five hundred dollars.

(As amended by chapter 196, Laws of 1919.)

Stenographer, twelve hundred dollars.

Clerk, twelve hundred dollars.

Railroad Commission

Rate clerk, three thousand dollars.
Inspector, twenty-one hundred dollars.
Stenographer, fifteen hundred dollars.
(As amended by chapter 109, Laws of 1919.)

State Veterinarian

(Salaries of veterinary surgeons, deputies, and employees fixed by livestock sanitary board under section 8, chapter 262, Laws of 1921, section 46-208.)

Mine Inspector

Deputy mine inspector, salary now fixed by Industrial Accident Board.

Adjutant-General

Adjutant-general, four thousand two hundred dollars.
(As amended by chapter 118, Laws of 1947; chapter 20, Laws of 1949.)
Assistant Adjutant-general, three thousand six hundred dollars.
(As provided by chapter 20, Laws of 1949.)
Stenographer (from Department of Child and Animal Protection), three hundred dollars.
(As amended by chapter 154, Laws of 1919.)

State Law Library

Librarian, twenty-five hundred dollars.

State Historical Library

Librarian, twenty-one hundred dollars.
First assistant, twelve hundred dollars.
Second assistant, twelve hundred dollars.

State Board of Health

Secretary, five thousand dollars.
Stenographer, twelve hundred dollars.
(As amended by section 3, chapter 157, Laws of 1919.)

Bureau of Child and Animal Protection

Secretary, twenty-five hundred dollars.
First, second, third, fourth, fifth and sixth deputies, each, eighteen hundred dollars.
Stenographer, nine hundred dollars.

Supreme Court

Court reporter (official stenographer), four thousand dollars.
(As amended by chapter 83, Laws of 1929.)
Marshal, twenty-four hundred dollars.
Attendant, twenty-four hundred dollars.
(As amended by chapter 39, Laws of 1939.)

State Land Department

Assistant secretary Carey land act board, eighteen hundred dollars.

History: En. Sec. 1, Ch. 40, L. 1915; re-en. Sec. 440, R. C. M. 1921, with amendments as noted.

NOTE.—The operation of this section is affected by the enactment of Ch. 30, Laws 1943 (secs. 59-901 and 59-902).

Cross-References

Adjutant general, salary, sec. 77-120.

Rate clerk for board of railroad commissioners, salary, sec. 72-108.

State law librarian, salary, sec. 44-409.

Collateral References

States \Rightarrow 60, 61.

81 C.J.S. States §§ 89-91.

43 Am. Jur. 134, Public Officer, § 340.

25-506. (441) Compensation of other officers, where prescribed. The compensation of all other officers and employees not specified in this chapter will be found under the laws regulating the several officers, boards, commissions and departments of the state.

History: En. Sec. 441, by recommendation of code commissioner of 1921.

25-507. (442) Salaries of officers, how paid. Unless otherwise provided by law the salaries of officers must be paid out of the general fund in the state treasury, monthly, on the last day of the month.

History: En. Sec. 1133, Pol. C. 1895; amd. Sec. 1, p. 114, L. 1901; re-en. Sec. 435, Rev. C. 1907; amd. Sec. 1, Ch. 107, L. 1917; re-en. Sec. 442, R. C. M. 1921.

Collateral References

Officers \Rightarrow 101.

67 C.J.S. Officers § 99.

25-508. (443) Traveling expenses of officers attending conventions.

(1) Hereafter no state, county, city or school district officer or employee of the state or of any county or city, or of any school district, shall receive payment from any public funds for traveling expenses or other expenses of any sort or kind for attendance upon any convention, meeting, or other gathering of public officers save and except for attendance upon such convention, meeting or other gatherings as said officer may by virtue of his office be required by law to attend, provided that nothing herein shall prohibit the state board of examiners from authorizing the payment of the necessary traveling expenses of any state officer or employee, whenever in the judgment of the board an emergency exists, and the public interest demands, which reasons are to be spread on the minutes of the board of examiners, and provided further, that the board of trustees of any county or district high school or of any school district may by resolution adopted by a majority of the entire board make their district a member of any state association of school districts or school district trustees, or any other strictly educational association and authorize the payment of dues to such association, and the necessary traveling expenses of an employee, or one (1) member of said board, to attend meetings of such association, or other meetings called for the express purpose of considering educational matters.

(2) Provided, further, one (1) member of the board of county commissioners may be allowed actual transportation expenses and per diem for attendance upon any general meeting of county commissioners or assessors held within the state not oftener than once a year and the proportionate expenses and charges against each county as a member of such association shall also be paid; provided also that county attorneys and sheriffs are hereby authorized to attend their respective meeting or convention held within the state and are allowed actual traveling expenses not oftener than once a year for attending same.

(3) Provided, further, that nothing herein shall be construed to prevent any city or town council, commission or other governing body from paying membership fees and dues in any organization of city and town officials whose purpose is improvement of laws relating to city and town government and their better and more economical administration, and the necessary expense of any regular officer or employee of such city or town in attending any convention or meeting of such organization upon the direction of such council, commission, or other governing body by order upon its minutes stating that the public interest requires such attendance; such payment of membership fees, dues and/or expense to be made from such fund of the city or town as the council, commission or other governing body shall direct by such order, upon claim presented, audited and allowed as are other claims against such city or town.

History: En. Sec. 1, Ch. 241, L. 1921; re-en. Sec. 443, R. C. M. 1921; amd. Sec. 1, Ch. 124, L. 1923; amd. Sec. 1, Ch. 48, L. 1927; amd. Sec. 1, Ch. 86, L. 1931; amd. Sec. 1, Ch. 130, L. 1933; amd. Sec. 1, Ch. 119, L. 1943; amd. Sec. 1, Ch. 58, L. 1949.

References

State ex rel. King v. Smith, 98 M 171, 38 P 2d 274.

Collateral References

Counties↯46; Municipal Corporations

↯163; Officers↯99; Schools and School Districts↯48(5), 54; States↯59.

20 C.J.S. Counties § 79; 62 C.J.S. Municipal Corporations § 535; 67 C.J.S. Officers § 91; 78 C.J.S. Schools and School Districts §§ 98, 118; 81 C.J.S. States § 92.

43 Am. Jur. 154, Public Officers, § 369.

Public officer's rights and duties in respect of mileage and other allowances incident to duties of his office but which represented no actual expense or outlay by him. 81 ALR 493.

25-509. Advancement of money on salaries—public officers. In any case where a public officer of this state is paid his salary quarterly under and by virtue of a provision of the constitution of the state of Montana, upon demand of any such officer, the state auditor of the state of Montana, or other disbursing officer, is authorized and directed to advance out of salary account such sum of money to such official, and to deduct same from his salary, as is equivalent to the salary that he would be entitled to receive if he were paid his salary monthly; provided that such advancement on account of salary earned shall not be made more often than once each month.

History: En. Sec. 1, Ch. 9, L. 1939.

Collateral References

States↯64.

81 C.J.S. States § 96.

CHAPTER 6

SALARIES OF COUNTY OFFICERS, DEPUTIES AND EMPLOYEES

- Section 25-601. Payment of salaries of county officers and assistants.
 25-602. Appointment of deputies—payment of salaries.
 25-603. Compensation allowed deputies and assistants.
 25-604. County commissioners to fix salaries of deputies—limitations.
 25-605. Salaries of certain county officers.
 25-606. Salary of sheriff.
 25-607. Salary of county attorney.
 25-608. Salary of clerk of court and county auditor.
 25-609. Salaries fixed by county commissioners in September of each election year.
 25-610. Existing office holders to receive present salaries.

25-611. Effective date—existing office holders unaffected.

25-611.1. Effective date of 1953 amendment—existing office holders unaffected.

25-601. (4868) Payment of salaries of county officers and assistants.

The salaries of the several county officers and their assistants must be paid monthly out of the general fund of the county, upon the order of the board of county commissioners, except the salary of the county attorney, which is payable monthly, one-half from the general fund of the county and the other one-half from the state treasury upon the warrant of the state auditor. The county commissioners of each county shall, within thirty (30) days after the election or appointment to fill a vacancy for any cause, of any county attorney, certify such election or appointment to the state auditor who shall thereafter draw warrants for such salaries in the same manner as for state officers. Provided, in case of a vacancy, the county commissioners shall immediately notify the state auditor, and the auditor shall compute the salaries due on the basis of said notification.

History: En. Sec. 4595, Pol. C. 1895; re-en. Sec. 3117, Rev. C. 1907; re-en. Sec. 4868, R. C. M. 1921; amd. Sec. 4, Ch. 141, L. 1925; amd. Sec. 1, Ch. 7, L. 1945.

Collateral References

Counties⇒75(1).
20 C.J.S. Counties § 125.
43 Am. Jur. 134, Public Officers, § 340.

25-602. (4872) Appointment of deputies—payment of salaries. The number of deputies allowed to county officers and their compensation must not exceed the maximum limits prescribed in this chapter. Salaries must be allowed and paid monthly upon the order of the board of county commissioners, and paid out of the contingent fund.

History: En. Sec. 4603, Pol. C. 1895; re-en. Sec. 3136, Rev. C. 1907; re-en. Sec. 4872, R. C. M. 1921.

20 M 424, 431, 432, 51 P 1034; Hogan v. Cascade County, 36 M 183, 185, 92 P 529.

NOTE.—A portion of the above section being no longer applicable was omitted from the code in 1921.

References

Cited or applied as section 4603, Political Code, in Jobb v. County of Meagher, 20 M 424, 430, 51 P 1034; Penwell v. Board of County Commrs. of Lewis and Clark County, 23 M 351, 354, 59 P 167.

Operation and Effect

The board of county commissioners has the power to determine, within the maximum limits prescribed by law, the number and compensation of deputies allowed by the sheriff. Jobb v. County of Meagher,

Collateral References

Counties⇒62, 74(6).
20 C.J.S. Counties §§ 101, 122.

25-603. (4873) Compensation allowed deputies and assistants. The annual compensation allowed to any deputy or assistant is as follows:

Counties of the First Class.

Sheriff.

One under-sheriff, at a rate of not less than twenty-six hundred dollars.

One chief deputy and clerk, at a rate of not less than two thousand dollars.

All other deputies, at a rate of not less than eighteen hundred dollars.

Clerk and Recorder.

One chief deputy, at a rate of not less than twenty-one hundred dollars.

All other deputies, at a rate of not less than sixteen hundred fifty dollars.

Clerk of District Court.

One chief deputy, at a rate of not less than nineteen hundred and fifty dollars.

Each department deputy clerk, at a rate of not less than eighteen hundred dollars.

All other deputies, at a rate of not less than sixteen hundred fifty dollars.

Treasurer.

One chief deputy, at a rate of not less than twenty-one hundred dollars.

Other deputies, at a rate of not less than sixteen hundred fifty dollars.

Assessors.

One chief deputy, at a rate of not less than twenty-one hundred dollars.

Other deputies, between first Monday of March and August of each year, at a rate of not less than one hundred and fifty dollars per month.

County Attorney.

Chief deputy, at a rate of not less than twenty-four hundred dollars.

Other deputies, at a rate of not less than eighteen hundred dollars.

Auditor.

One chief deputy, at a rate of not less than eighteen hundred dollars.

Other deputies, at a rate of not less than sixteen hundred fifty dollars.

Counties of the Second and Third Classes.

County Attorney.

Chief deputy, at a rate of not less than twenty-one hundred dollars.

Other deputies, at a rate of not less than eighteen hundred dollars.

Under-sheriff, at a rate of not less than nineteen hundred fifty dollars.

Each deputy sheriff, at a rate of not less than eighteen hundred dollars.

Chief deputy clerk of the district court, at a rate of not less than nineteen hundred fifty dollars.

Other deputy clerks of the district court, at a rate of not less than eighteen hundred dollars.

Chief deputy treasurer, at a rate of not less than nineteen hundred fifty dollars.

Each deputy treasurer, at a rate of not less than sixteen hundred fifty dollars.

Chief deputy clerk and recorder, at a rate of not less than nineteen hundred fifty dollars.

Each deputy clerk and recorder, at a rate of not less than sixteen hundred fifty dollars.

Chief deputy assessor, at a rate of not less than nineteen hundred fifty dollars.

Each deputy assessor or assistant assessor, at a rate of not less than sixteen hundred fifty dollars.

Each deputy auditor, at a rate of not less than sixteen hundred fifty dollars.

Counties of the Fourth and Fifth Classes.

Under-sheriff, at a rate of not less than nineteen hundred fifty dollars.

Each deputy sheriff and jailor, at a rate of not less than sixteen hundred fifty dollars.

Deputy clerks and recorder, at a rate of not less than sixteen hundred fifty dollars.

Deputy clerks of the district court, at a rate of not less than sixteen hundred fifty dollars.

Deputy treasurer and deputy assessor allowed by law, at a rate of not less than sixteen hundred fifty dollars.

Counties of the Sixth and Seventh Classes.

Under-sheriff, at a rate of not less than eighteen hundred dollars.

Each deputy sheriff, at a rate of not less than sixteen hundred fifty dollars.

Deputy clerks and recorder, at a rate of not less than sixteen hundred fifty dollars.

Deputy clerks of the district court, at a rate of not less than sixteen hundred fifty dollars.

Each deputy treasurer and deputy assessor or assistant assessor allowed by law, at a rate of not less than sixteen hundred fifty dollars.

History: En. Sec. 3118, Rev. C. 1907; amd. Sec. 1, Ch. 85, L. 1909; amd. Sec. 1, Ch. 132, L. 1911; amd. Sec. 1, Ch. 222, L. 1919; re-en. Sec. 4873, R. C. M. 1921.

NOTE.—The operation of this section is affected by section 25-604.

NOTE.—This section held governed by section 25-604 (4874) as amended by Ch. 82, Laws 1923, as to the compensation that may be fixed by the county commissioners for temporary deputy county officers. Opinions of Attorney General Vol. 12, p. 137.

References

Cited or applied as section 4596, Political Code, in *Jobb v. County of Meagher*, 20 M 424, 430, 51 P 1034; before amendment, in *Penwell v. Board of County Commrs. of Lewis and Clark County*, 23 M 351, 352, 59 P 167; *Hogan v. Cascade County*, 36 M 183, 186, 92 P 529; *Farrell v. Yellowstone County*, 68 M 313, 218 P 559; *Adami v. Lewis and Clark County*, 114 M 557, 560, 138 P 2d 969; *State ex rel. Thompson v. Gallatin County*, 120 M 263, 184 P 2d 998, 1001; *Kelly v. Silver Bow County*, 125 M 272, 233 P 2d 1035, 1036.

25-604. (4874) County commissioners to fix salaries of deputies—limitations. That the boards of county commissioners in the several counties in the state shall have the power to fix the compensation allowed any deputy or assistant mentioned in the preceding section except as herein provided; provided the salary of no deputy or assistant shall be more than ninety per cent (90%) of the salary of the officer under whom such deputy or assistant is serving; except as herein provided; where any deputy or assistant is employed for a period of less than one (1) year the compensation of such deputy or assistant shall be for the time so employed; provided, the rate of such compensation shall not be in excess of the rates now provided by law for similar deputies and assistants, except as herein provided; said boards of county commissioners shall likewise have the power to fix and determine the number of deputy county officers and allow to the several county officers a greater or less number of deputies or assistants, than the maximum number allowed by law, when in the judgment of the board of county commissioners such greater or less number of deputies is or is not needed for the faithful and prompt discharge of the duties of any county

office; provided that after this act becomes effective the maximum salary rate per month of any deputy or assistant should not be less than the maximum salary allowed in any month of the year immediately previous to the date this act becomes effective. In fixing the compensation allowed the under sheriff the board must fix the same at ninety-five per cent (95%) of the salary of the officers under whom such under sheriff is serving; in fixing the compensation allowed the deputy sheriffs the board must fix the same at ninety per cent (90%) of the salary of the officer under whom such deputy sheriff is serving.

History: En. Sec. 2, Ch. 222, L. 1919; amd. Sec. 1, Ch. 204, L. 1921; re-en. Sec. 4874, R. C. M. 1921; amd. Sec. 1, Ch. 82, L. 1923; amd. Sec. 1, Ch. 87, L. 1943; amd. Sec. 1, Ch. 151, L. 1945; amd. Sec. 1, Ch. 47, L. 1947; amd. Sec. 1, Ch. 136, L. 1951.

NOTE.—See *Jobb v. County of Meagher*, 20 M 424, 51 P 1034, for history of earlier acts.

Constitutionality of Increase of Salaries

The amendment to this section permitting a 12½% increase in the maximum salaries of deputy and assistant county officials, is not in conflict with art. V, sec. 31 of the Constitution since the officers affected are not "public officers" (meaning officers having a fixed and definite term) but hold at the pleasure of the appointing power; held also not to offend against sec. 26 of the same article prohibiting enactment of special laws, since it is a law of general operation. *Adami v. Lewis and Clark County*, 114 M 557, 559, 138 P 2d 969.

Fixing Compensation

Board of county commissioners may exercise its statutory power to fix the compensation of deputies and assistants in the county offices by providing for such compensation in the annual budget. *State ex rel. Thompson v. Gallatin County*, 120 M 263, 184 P 2d 998, 1001.

Designation of compensation in the budget is not the only way in which the board of county commissioners can exercise its power to fix salaries but the board can fix such salaries by minute entry, motion, or in any of the ways employed before passage of the budget act. *State ex rel. Thompson v. Gallatin County*, 120 M 263, 184 P 2d 998, 1002.

Where board of county commissioners appropriated funds for office at rate of \$170 per month but in their journal stated

that the salary for the office was fixed by the board at \$150 per month, the salary for the office was \$150 per month. *State ex rel. Thompson v. Gallatin County*, 120 M 263, 184 P 2d 998, 1003.

Operation and Effect

While the board of county commissioners has no power to decrease the compensation of regular deputies of county officers fixed by section 25-603, it has discretion, under this section, to fix the compensation of extra deputies appointed for temporary service, at any rate it may deem expedient, provided it does not exceed the rate paid the regular deputies. *Modesitt v. Flathead County*, 57 M 209, 187 P 899. See also *Farrell v. Yellowstone County*, 68 M 313, 218 P 559.

If the services the county commissioners seek to have done involve only an investigation of county offices for abstracting purposes, that can be done by a regularly appointed deputy county officer; and there is no statutory authority for the county commissioners to employ anyone to perform the services on a commission basis. *Kelly v. Silver Bow County*, 125 M 272, 233 P 2d 1035, 1036.

Salary for Time Not Served

Where deputy sheriff did not serve for three months because of illness, the county commissioners could not be forced to pay him his salary for those three months. *State ex rel. Rusch v. Board of County Commrs.*, 121 M 162, 191 P 2d 670, 673.

References

State v. Crouch, 70 M 551, 554, 227 P 818.

Collateral References

Counties 61, 74(6).
20 C.J.S. *Counties* §§ 100, 122.

25-605. Salaries of certain county officers. The salaries of county treasurers, county clerks, county assessors and county superintendents of schools, and of county surveyors in counties where county surveyors now receive salaries, as provided in section 32-303, shall be based on the population and taxable valuation of the county in accordance with the following schedule:

Population of County	Salary Col. A	Taxable Valuation of County	Salary Col. B
Below 3,000	\$1,310	Below \$2,000,000	\$1,310
3,000 to 3,999	1,358	\$ 2,000,000 to 2,999,999	1,358
4,000 to 4,999	1,406	3,000,000 to 3,999,999	1,406
5,000 to 5,999	1,454	4,000,000 to 4,999,999	1,454
6,000 to 6,999	1,502	5,000,000 to 5,999,999	1,502
7,000 to 7,999	1,550	6,000,000 to 6,999,999	1,550
8,000 to 8,999	1,598	7,000,000 to 7,999,999	1,598
9,000 to 9,999	1,646	8,000,000 to 9,999,999	1,646
10,000 to 12,499	1,694	10,000,000 to 11,999,999	1,694
12,500 to 14,999	1,742	12,000,000 to 13,999,999	1,742
15,000 to 17,499	1,790	14,000,000 to 15,999,999	1,790
17,500 to 19,999	1,838	16,000,000 to 17,999,999	1,838
20,000 to 24,999	1,886	18,000,000 to 19,999,999	1,886
25,000 to 29,999	1,934	20,000,000 to 22,499,999	1,934
30,000 to 39,999	1,982	22,500,000 to 24,999,999	1,982
40,000 to 49,999	2,030	25,000,000 to 29,999,999	2,030
50,000 to 59,999	2,078	30,000,000 to 34,999,999	2,078
60,000 to 69,999	2,126	35,000,000 to 39,999,999	2,126
70,000 to 79,999	2,174	40,000,000 to 44,999,999	2,174
80,000 and over	2,222	45,000,000 to 49,999,999	2,222
		50,000,000 to 54,999,999	2,270
		55,000,000 to 59,999,999	2,318

The total salary paid to county treasurers, county clerks, county assessors and county superintendents of schools and of county surveyors in counties where county surveyors now receive salaries, as provided in section 32-303, shall be the sum of the salary shown in column A based on population when added to the salary shown in column B based on taxable valuation, provided that the minimum salary to be paid under the foregoing schedule will not be less than twenty-nine hundred eight (\$2908.00) dollars per annum.

History: En. Sec. 1, Ch. 150, L. 1945; amd. Sec. 1, Ch. 177, L. 1949; amd. Sec. 1, Ch. 118, L. 1951; amd. Sec. 1, Ch. 222, L. 1953.

NOTE.—Chapter 150, Laws 1945 (secs. 25-605 to 25-610 of this Code), became effective July 1, 1945. It expressly repealed sections 4867, 4869, 4870 and 4871 of the 1935 Code, which fixed the salaries of most county officers. However, the salaries of county officers who were in office on July 1, 1945 are not affected by Ch. 150, Laws 1945. Hence in order to find the statutes fixing the salaries of any such officers, it will be necessary to consult the 1935 Code and the session laws

prior to 1945, see sections 4867, 4869, 4870, 4871 and Ch. 127, Laws 1941.

Compiler's Note

The title of Ch. 118, Laws 1951 stated that it was amending section 1 of chapter 177 of the Laws of 1949 and the introductory clause read "That Chapter 177 of the Laws of 1949, be, and the same hereby is amended to read as follows:" then followed the text of this section only. Section 1 of Ch. 177, Laws 1949 also contained the provisions now in sections 25-606 to 25-609, although it would seem apparent that there was no intention to affect such sections.

25-606. Salary of sheriff. The salary of the county sheriff shall be three thousand dollars (\$3,000.00) in counties where the county treasurer is paid this amount or less, and four thousand two hundred dollars (\$4,200.00) in counties having a population of over forty thousand (40,000).

In all other counties the salary of the sheriff shall be the same as that of the county treasurer.

History: En. Sec. 2, Ch. 150, L. 1945;
amd. Sec. 1, Ch. 177, L. 1949; amd. Sec.
2, Ch. 222, L. 1953.

Cross-Reference

See compiler's note to sec. 25-605.

25-607. Salary of county attorney. The salary of the county attorney shall be two thousand two hundred ninety-six dollars (\$2,296.00) in counties of less than four thousand (4,000) population. In counties with a population of over forty thousand (40,000) the salary of the county attorney shall be three thousand seven hundred dollars (\$3,700.00). In all other counties the salary of the county attorney shall be the same as that of the county treasurer.

History: En. Sec. 3, Ch. 150, L. 1945;
amd. Sec. 1, Ch. 177, L. 1949; amd. Sec.
3, Ch. 222, L. 1953.

Cross-Reference

See compiler's note to sec. 25-605.

25-608. Salary of clerk of court and county auditor. The salary of the clerk of the district court shall be the same as that paid to the county treasurer. The salary of the county auditor, in all counties wherein such office is authorized shall be the same as that paid to the county treasurer.

History: En. Sec. 4, Ch. 150, L. 1945;
amd. Sec. 1, Ch. 91, L. 1947; amd. Sec. 1,
Ch. 177, L. 1949.

Cross-Reference

See compiler's note to sec. 25-605.

25-609. Salaries fixed by county commissioners in September of each election year. In September of any year in which the county treasurer, county clerk, county assessor, county school superintendent, county sheriff, county attorney, or clerk of the district court is to be elected, the county commissioners shall, by resolution, fix the salaries of the officials to be elected in conformity with the schedule in section 25-605, based on the population as shown in the last decennial federal census and on the taxable valuation of the county at the time the salaries are fixed. Salaries so fixed shall apply during the entire term for which the foregoing officials are elected and should a vacancy occur, the person appointed or elected to fill the unexpired term in the office vacated shall receive the same salary as the person vacating the office.

History: En. Sec. 5, Ch. 150, L. 1945;
amd. Sec. 1, Ch. 177, L. 1949; amd. Sec.
4, Ch. 222, L. 1953.

Cross-Reference

See compiler's note to sec. 25-605.

25-610. Existing office holders to receive present salaries. This act shall be in full force and effect on and after July 1, 1945, but shall not in any manner affect the salaries of those county officers who are in office at the date such act goes into effect, such officers being entitled to the same salaries they are receiving at the date this act takes effect for the remainder of the terms for which they were elected.

History: En. Sec. 7, Ch. 150, L. 1945.

Compiler's Note

The amending clause of Sec. 1, Ch. 177, Laws 1949 read: "That Chapter 150 of the laws of 1945, as amended by Chapter

91 of the laws of 1947, be, and the same is hereby amended to read as follows:" and then followed sections 1 to 5. The omission of section 7 from such amendatory act may have effected a repeal of this section.

25-611. Effective date—existing office holders unaffected. This act shall be in full force and effect from and after its passage and approval, but

nothing contained herein shall be construed to or shall in any manner effect an increase of the salary or emolument of any of the public officers listed in sections 25-605 to 25-609 who are in office at the date this act goes into effect, such officers being entitled to the same salaries they are receiving at the date this act takes effect for the remainder of the terms for which they were elected. If a vacancy occasioned by death, resignation, or otherwise, should occur in any of the public offices listed in sections 25-605 to 25-609 after this act takes effect, the person elected or appointed to fill such vacancy shall be entitled to receive the salary therefor set out in sections 25-605 to 25-609.

History: En. Sec. 2, Ch. 177, L. 1949.

25-611.1. Effective date of 1953 amendment—existing office holders unaffected. This act shall be in full force and effect from and after its passage and approval, but nothing contained herein shall be construed to or shall in any manner effect an increase of the salary or emolument of any of the public officers hereinbefore mentioned who are in office at the date this act goes into effect, such officers being entitled to the same salaries they are receiving at the date this act takes effect for the remainder of the terms for which they are elected.

History: En. Sec. 5, Ch. 222, L. 1953.

sections 25-605 to 25-607, 25-609 became effective when approved March 5, 1953.

Compiler's Note

Chapter 222 of Laws 1953 compiled as

TITLE 26

FISH AND GAME

- Chapter 1. Fish and game commission and wardens—creation—powers and duties, 26-101 to 26-134.
2. Fishing and hunting licenses, 26-201 to 26-224.
3. Restrictions on taking fish and game—open and closed seasons, 26-301 to 26-344.
4. Beaver—trapping—license—protection, 26-401, 26-402.
5. Protection of certain wild birds—sale of confiscated birds and animals, 26-501 to 26-509.
6. Power of commission to dispose of game animals damaging property and oversupply of fish in Lake county (26-601 to 26-612 Repealed).
7. Shipment of animals from state, 26-701 to 26-707.
8. Miscellaneous prohibitions, 26-801 to 26-810.
9. Outfitter's license—taxidermist's license, 26-901 to 26-907.
10. Disposal of fines—duties of courts—exceptions from act, 26-1001 to 26-1008.
11. Game preserves, migratory bird reservations, 26-1101 to 26-1127.
12. Permits for breeding game birds and animals—other regulations, 26-1201 to 26-1204.
13. Fur dealer's license and regulation, 26-1301 to 26-1306.
14. Fish restoration and management projects, 26-1401 to 26-1403.

CHAPTER 1

FISH AND GAME COMMISSION AND WARDENS—CREATION— POWERS AND DUTIES

- Section 26-101. Creation of state fish and game commission.
- 26-102. Districts for appointment of members of commission.
- 26-103. Meetings.
- 26-104. Powers and duties of commission.
- 26-104.1. Repealed.
- 26-105. Compensation of commissioners.
- 26-105.1. Budget act inapplicable.
- 26-106. State fish and game director—qualifications—powers—duties.
- 26-106.1. State fish and game warden designated state fish and game director—deputy fish and game wardens designated state fish and game wardens.
- 26-106.2. Application of change of name.
- 26-107. State game wardens—appointment—qualifications.
- 26-108. Employees of the commission—removal—rating—salaries—expenses.
- 26-109. Political activity prohibited.
- 26-110. Qualifications, powers and duties of game wardens.
- 26-111. Oath and bond of state fish and game director and wardens.
- 26-112. Repealed.
- 26-113. Repealed.
- 26-114. Sheriffs, constables, peace officers and state forest officers.
- 26-115. Superintendent of state fisheries—appointment and bond.
- 26-116. Superintendent of state fisheries—salary.
- 26-117. Powers and duties of superintendent of state fisheries.
- 26-118. State fish and game commission to control state waters for propagation of fish.
- 26-119. State fish and game commission shall procure plans for buildings.
- 26-120. Transfer of funds.
- 26-121. State fish and game fund.
- 26-122. Repealed.
- 26-123. Salaries, per diem and expenses, how paid.

- 26-124. Reports of state fish and game director.
- 26-125. Publication of laws.
- 26-126. Duty of attorney general to advise commissioners—prosecuting attorneys to prosecute complaints.
- 26-127. Creating fish and game preserves, refuges, sanctuaries, rest grounds, closed districts and closed seasons.
- 26-128. Posting and publication of orders, rules and regulations of commission.
- 26-129. Effect of orders, rules and regulations.
- 26-130. Repealed.
- 26-131. Preamble concerning Indian treaty of 1855.
- 26-132. Authority for commission to make agreement with Indians concerning hunting and fishing.
- 26-133. Payments to counties for department owned land—exceptions.
- 26-134. Allocation of funds to school districts.

26-101. (3650) Creation of state fish and game commission. There is hereby created for the state of Montana, a state fish and game commission, which shall consist and be composed of five (5) members, who shall be appointed and who shall hold office in accordance with the provisions of this act, and who shall have the powers and duties prescribed by law. The commission created hereby shall be known as the state fish and game commission and the members thereof as the state fish and game commissioners.

History: Earlier acts creating fish and game commissions were Ch. 176, L. 1907; Secs. 1980 et seq., Rev. C. 1907; amd. Sec. 1, Ch. 18, L. 1911; amd. Sec. 8, Ch. 173, L. 1917. This section En. Sec. 1, Ch. 193, L. 1921; re-en. Sec. 3650, R. C. M. 1921; amd. Sec. 1, Ch. 166, L. 1941.

References

State ex rel. Nagle v. Sullivan et al., 98 M 425, 40 P 2d 995.

Collateral References

Fish 11; Game 6.
36 C.J.S. Fish § 37; 38 C.J.S. Game § 9.
22 Am. Jur. 665, Fish and Fisheries, generally; 24 Am. Jur. 373, Game and Game Laws, generally.

Power of game or fish commission to open or close season. 34 ALR 832.

26-102. (3651) Districts for appointment of members of commission.

(1) The state of Montana is hereby divided into the following districts and the counties composing each district are as follows:

District No. 1. Lincoln, Flathead, Sanders, Lake, Mineral, Missoula, Powell, Ravalli, Granite, and Lewis and Clark.

District No. 2. Deer Lodge, Silver Bow, Beaverhead, Madison, Jefferson, Broadwater, Gallatin, Park and Sweetgrass.

District No. 3. Glacier, Toole, Liberty, Hill, Pondera, Teton, Chouteau, Cascade, Judith Basin, Fergus, Blaine, Meagher and Wheatland.

District No. 4. Phillips, Valley, Daniels, Sheridan, Roosevelt, Petroleum, Garfield, McCone, Richland, Dawson, Wibaux.

District No. 5. Golden Valley, Musselshell, Stillwater, Carbon, Yellowstone, Big Horn, Treasure, Rosebud, Custer, Powder River, Carter, Fallon, Prairie.

(2) One member of the commission shall be appointed from each of the foregoing districts by the governor of the state of Montana. The selection of said members shall be made without regard to political affiliation but for the sole welfare of the fish and game and wildlife of the state. No person shall be appointed a member of said commission unless he shall be informed or interested and experienced in the subject of wildlife, fish and game, and the requirements for the conservation and protection of fish, game, and game birds and animals. The first members of the commission created

hereby shall be appointed by the governor within thirty (30) days after the passage and approval of this act.

(3) The first fish and game commissioners appointed in districts 1, and 5 shall each hold office for a term of four (4) years; the first commissioners appointed in districts 2 and 4 shall each hold office for a term of three (3) years; the first fish and game commissioner appointed in district 3 shall hold office for a term of two (2) years, and thereafter the term of office of each fish and game commissioner shall be four (4) years.

(4) The governor may remove any fish and game commissioner for inefficiency, neglect of duty, or misconduct in office, or for cause by delivering to him a copy of the charges and affording him an opportunity of being publicly heard in person or by counsel in his own defense, upon not less than fifteen (15) days' notice in writing accompanied by a statement of the charges held against him.

(5) Vacancies occurring in the fish and game commission shall be filled by the governor in the same manner and from the districts in which such vacancies occur.

(6) Each commissioner shall, before entering upon his official duties, execute and file a surety bond with the secretary of state, running to the state of Montana, in the penal sum of one thousand (\$1,000.00) dollars, conditioned for the faithful performance of his duties and that he will account for and pay over to the fish and game fund of the state all moneys received by him and he shall be reimbursed for the premium on said bond from the state fish and game fund upon furnishing a proper voucher therefor.

History: En. Sec. 2, Ch. 193, L. 1921; re-en. Sec. 3651, R. C. M. 1921; amd. Sec. 2, Ch. 166, L. 1941.

Removal of Commissioners Without Notice Held Illegal

Prior to the enactment of chapter 193, Laws of 1921 (sections 26-101 to 26-130), members of the fish and game commission appointed by the governor were under the laws applicable, removable for cause after notice and hearing. By that chapter the legislature, after providing that the terms of the commissioners shall be four years, declared that they should be removable "for cause or the good of the commis-

sion." The governor without notice or hearing removed a member of the commission "for the good of the commission." Held, in a proceeding in quo warranto, that whenever the charges on which a fish and game commissioner is sought to be removed involve malfeasance, misfeasance or non-feasance in office, or directly reflect upon the official or personal integrity of the incumbent proposed to be removed, the act requires notice and an opportunity to meet the charges, and that these requirements not having been met, removal of the incumbent was illegal. State ex rel. Nagle v. Sullivan et al., 98 M 425, 443, 40 P 2d 995.

26-103. (3652) Meetings. The members of the commission shall within thirty days after their appointment and annually thereafter meet and organize by electing from its membership a chairman and shall hold quarterly or other meetings for the transaction of business, at such times and places it may deem necessary and proper, said meetings to be called by the chairman, or by a majority of the commission, and to be held at the time and place specified in the call for the same. A majority of the members of the commission shall constitute a quorum for the transaction of any business which may come before it. The said commission shall keep a record of all the business transacted by it. The chairman and secretary, hereinafter designated, shall sign all orders, minutes or documents for the commission. The principal offices of the commission shall be located in the capitol building in Helena, and suitable and adequate rooms therefor, together with necessary

furnishings, janitor services, light, heat and water shall be furnished by the state of Montana without charge to the commission.

History: En. Sec. 3, Ch. 193, L. 1921; 1, Ch. 77, L. 1923; amd. Sec. 1, Ch. 192, L. re-en. Sec. 3652, R. C. M. 1921; amd. Sec. 1925; amd. Sec. 1, Ch. 114, L. 1945.

26-104. (3653) Powers and duties of commission. (1) The commission hereby created shall have supervision over all the wild life, fish, game, and nongame birds, and waterfowl, and the game, and furbearing animals of the state, and shall possess all powers necessary to fulfill the duties prescribed by law with respect thereto, and to bring actions in the proper courts of this state for the enforcement of the fish and game laws of the state, and the orders, rules and regulations adopted and promulgated by the commission.

(2) It shall have full power and authority to enforce all the laws of the state of Montana, respecting the protection, preservation and propagation of fish, game, and furbearing animals, game and nongame birds, within the state.

(3) It shall have the exclusive power to expend for the protection, preservation and propagation of fish, game, and furbearing animals, and game and nongame birds, all funds of the state of Montana collected or acquired for that purpose, whether arising from state appropriation, licenses, fines, gifts, or otherwise, all sums collected or received from the sale of hunting and fishing licenses or permits, from the sale of seized game or hides, or from fines, damages collected for violations of the fish and game laws of this state, from appropriations, or received by the commission from any other sources are hereby appropriated to and placed under control of the Montana fish and game commission.

(4) It shall have power to discharge any appointee or employee of such commission for cause at any time.

(5) It shall have full power and authority to dispose of all property owned by the state of Montana, used for the protection, preservation and propagation of fish, game and furbearing animals, and game and nongame birds, which shall have been found to be of no further value or use to the state, and shall turn over proceeds arising therefrom to the state treasurer to be by him credited to the state fish and game fund.

(6) It shall have full power and authority to use so much of the fish and game funds of the state as may be necessary for the construction, maintenance, operation, upkeep, and repair of fish hatcheries, game farms or other property or means and appliances for the protection and propagation of fish, game and furbearing animals, or game or nongame birds in the state of Montana, and it shall have the authority to appropriate moneys from the funds at its disposal for the extermination or eradication of predatory animals that destroy fish, game, or furbearing animals, or game or nongame birds.

(7) It shall have authority to provide for the importation of game birds and game and furbearing animals, and for the protection, propagation, and distribution of such imported or native birds and animals.

(8) It shall have authority to spend so much of the state fish and game funds as may be necessary to introduce and propagate wild waterfowl food

and for that purpose may secure expert advice as to what kinds of water-fowl foods are adapted to the climate, soil, and waters of this state.

(9) It shall be its duty to furnish plans for, and to direct and compel the construction and installation and repair of fish ladders upon dams and other obstructions in streams, which, however, shall be installed and maintained at the expense of the owners of said dam or other obstruction.

(10) It shall have the authority to purchase and maintain at the expense of the state fish and game fund suitable fish screens or fish wheels, or other devices, to install them in irrigating ditches to prevent fish entering said ditches.

(11) It shall have authority to locate, lay out, construct and maintain nurseries and rearing ponds where fry can be planted, propagated and reared and when of suitable sizes, liberated and distributed in the waters of this state, and may expend from the state fish and game funds such sums as may be necessary for this purpose.

(12) It shall have authority to acquire by gift, purchase, capture, or otherwise, any fish, game, game birds, or animals, for propagation, experimental or scientific purposes.

(13) It shall have authority to acquire by purchase, condemnation, lease, agreement, gift, or devise, lands or waters suitable for the purposes hereinafter enumerated, and develop, operate and maintain the same for said purposes: (a) For fish hatcheries, nursery ponds, or game farms; (b) Lands or waters suitable for game, bird, fish, or furbearing animal restoration, propagation, or protection; (c) For public hunting, fishing, or trapping areas to provide places where the public may hunt, trap, or fish in accordance with the provisions of law or the regulations of the commission; (d) To extend and consolidate by exchange lands or waters suitable for the above purposes; (e) To capture, propagate, transport, buy, sell, or exchange any species of game, bird, fish, fish eggs, or furbearing animals needed for propagation or stocking purposes, or to exercise control measures of undesirable species.

(14) It shall have authority to enter into cooperative agreements with educational institutions and state, federal, or other agencies, to promote wild life research and to train men for wild life management. It shall have authority to enter into cooperative agreements with federal agencies, municipalities, corporations, organized groups of landowners, associations and individuals for the development of game, bird, fish, or furbearing animal management and demonstration projects.

(15) It shall have authority to fix seasons and bag limits, open or close, shorten or lengthen seasons on any species of game, bird, fish or furbearing animal as defined by section 26-201 of this code, and to declare areas open to the hunting of deer by bow and arrow permit holders, and during times when only bow and arrows may be used, to hunt deer in such areas; it is authorized to declare areas open to deer hunting where shot-guns only may be used to hunt or kill deer; and it is authorized to declare areas which may be open to special license holders only, and issue special licenses in a limited number when it shall determine, after proper investigation, that such a season is necessary to assure the maintenance of an

adequate supply of game animals, or to declare such a special season and issue special licenses whenever game animals are causing damage to private property, or when written complaint of such damage has been filed with the state fish and game commission by the owner of such property, and in determining to whom such licenses shall be issued, it may, when more applications are received than the number of animals to be killed, award permits to those chosen under a drawing system.

(16) It shall have authority to establish and close to hunting, trapping or fishing, game, bird or fish refuges on public lands and, with the consent of the owner, on private lands; and close streams and lakes, or parts thereof, to hunting, trapping or fishing.

(17) It shall have authority to divide the state into fish and game districts, and to create fish, game, or furbearing animal districts throughout the state of Montana and to declare closed season for hunting, fishing, or trapping in any of said districts, so created, and later to open said districts to hunting, fishing, or trapping.

(18) It shall have authority to declare a closed season on any species of game, fish, or game birds, or furbearing animals threatened with undue depletion, from any cause, and to close any area or district of any stream, public lake, or public water, or portions thereof, to hunting, trapping or fishing, for limited periods of time, when such action is necessary to protect recently stocked area, district, water, spawning waters, spawn-taking waters, or spawn-taking stations, or to prevent the undue depletion of fish, game and furbearing animals, and game and nongame birds, and later to open the same upon consent of a majority of the property owners affected.

(19) It shall have authority to establish game refuges for the purpose of providing safe sanctuaries in which game and furbearing animals or game or nongame birds may breed and replenish. Such refuges shall be established by order of the commission upon the petition and proper showing that such action is, in judgment of the fish and game commission, necessary and in the best interest of the wild life within the area, to be included within such refuge, it being the purpose of this provision to establish small refuges rather than large preserves or rather than to close large areas to hunting or trapping.

(20) It shall have authority to designate and protect certain areas as resting, feeding and breeding grounds for migratory birds, in which hunting and molestation shall be forbidden; it being the purpose of this provision not to interfere unduly with the hunting of waterfowl, but to provide havens in which they can rest, feed, and breed without molestation.

(21) After petition has been duly filed with the secretary of the commission, praying that an area shall be set aside as a game refuge or haven, the said secretary shall immediately publish a notice in a paper of general circulation in the county in which said area is proposed, that a hearing in connection therewith will be held at such place in said county as may be designated on a day not less than fifteen (15) days from the date of the first publication to be specified in said notice, at which time and place all interested parties shall have the right to appear and be heard.

(22) It shall have authority to establish and maintain an educational and biological department of their work for the collection and diffusion

of such statistics and information as shall be germane to the purpose of this act.

(23) It shall not have authority to issue permits to anyone to carry firearms within the confines of the state of Montana, except to regularly appointed officers and/or fish and game wardens who are paid by the state of Montana.

(24) It shall have authority to declare certain fishing waters within the state of Montana closed to fishing by all persons, excepting therefrom that class of persons whose ages are twelve (12) years or less; it being the purpose of this section to provide suitable fishing waters for the exclusive use and enjoyment of juveniles of the age of twelve (12) years or less, at such times and in such areas as the state fish and game commission shall in its discretion deem advisable and consistent with its policies relating to fishing in the state of Montana.

History: En. Sec. 4, Ch. 193, L. 1921; re-en. Sec. 3653, R. C. M. 1921; amd. Sec. 2, Ch. 77, L. 1923; amd. Sec. 2, Ch. 192, L. 1925; amd. Sec. 1, Ch. 200, L. 1935; amd. Sec. 1, Ch. 157, L. 1941; Subsec. (24) added by Sec. 1, Ch. 40, L. 1951; Subsec. (15) amd. Sec. 1, Ch. 157, L. 1955.

Fish and Game Commission Without Power to Condemn Site for Fish Rearing Pond

Held, prior to amendment by Ch. 200, Laws 1935 that the statute granting certain powers to the fish and game commission (26-104) does not in express terms nor by necessary implication grant it the power to condemn a site for the purpose of constructing a fish rearing pond, and that, such being the case, the presumption obtains that the legislature intended that the necessary property should be acquired by contract. State et al. v. Aitchison et al., 96 M 335, 338, 30 P 2d 805.

Power of Commission to Modify Existing Statutes

Held, on application for writ of supervisory control to annul a temporary order restraining the state fish and game commission from putting into effect its order lengthening the hunting season on elk in a certain locality, thus modifying such

season as fixed by section 26-307, that under this section, declaring that the statutes governing "such subjects" should continue in force and effect except as altered or modified by the rules and regulations of the commission, the legislature so empowered the commission, amounting to modification of existing statutes, hence the restraining order was improper. State ex rel. Fish and Game Commission of Montana v. District Court, 107 M 289, 292, 84 P 2d 798.

References

State v. Rathbone, 110 M 225, 238, 100 P 2d 86; Heiser v. Severy et al., 117 M 105, 117, 158 P 2d 501, 160 ALR 319.

Collateral References

22 Am. Jur., Fish and Fisheries, p. 696, § 40; p. 702, § 47; 24 Am. Jur. 388, Game and Game Laws, §§ 20 et seq.

Constitutionality and construction of statutes for prevention of waste of food products. 38 ALR 1196, 1198.

Constitutionality of statutes licensing or otherwise regulating business of breeding and dealing in game or undomesticated animals. 62 ALR 473.

Availability of writ of prohibition as means of controlling action of fish and game commission. 115 ALR 18.

26-104.1. Repealed—Chapter 267, Laws of 1955.

Repeal

This section (Sec. 1, Ch. 126, L. 1953), relating to a special season for hunting

deer with bow and arrow, was repealed by Sec. 5, Ch. 267, Laws 1955, effective March 10, 1955.

26-105. (3654) Compensation of commissioners. The members of the commission shall receive no compensation for their services as members thereof, except a per diem of fifteen dollars (\$15.00) for each member for every day in actual attendance at the meetings of said commission, or in the execution of their duties as members of said commission; provided, however, that in no instance shall any member of said commission

receive as said per diem a sum in excess of six hundred dollars (\$600.00) in any one (1) year, and the members of said commission shall be allowed their actual and necessary traveling expenses, while performing their duties as members of said commission, which shall be paid from the fish and game fund of the state of Montana upon presentation of proper vouchers therefor.

History: En. Sec. 5, Ch. 193, L. 1921; L. 1949; amd. Sec. 1, Ch. 6, L. 1951; amd. re-en. Sec. 3654, R. C. M. 1921; amd. Sec. Sec. 1, Ch. 127, L. 1953.
1, Ch. 59, L. 1927; amd. Sec. 1, Ch. 152,

26-105.1. Budget act inapplicable. This act shall be deemed and held valid notwithstanding the provisions of the budget act.

History: En. Sec. 2, Ch. 152, L. 1949;
re-en. Sec. 2, Ch. 6, L. 1951.

Compiler's Note

This act, referred to above, is section 26-105.

26-106. (3655) State fish and game director—qualifications—powers—duties. The state fish and game commission shall appoint and employ a state fish and game director. He shall be a person having experience, special training and skill in wildlife protection, conservation, and management. He shall be the secretary of the state fish and game commission, attend the meetings of said commission, and keep a record of all of its transactions, and shall make and keep an inventory, showing the description and value of all property owned by the state and under the administration of said commission. He shall be the administrative agent of the state fish and game commission, custodian of the property and records of the fish and game department, and shall maintain his office at the seat of the state government. He shall devote all of his time to his official duties, and such state fish and game director shall have all the powers and duties which are now or may hereafter be by law conferred upon and delegated to the state fish and game director. His powers and duties shall include those of a state game warden hereinafter enumerated. He shall be subject to the supervision and control of said commission and may be removed from office by said commission only for neglect of duty, incompetency or other good cause, and after full hearing on verified charges filed at least twenty (20) days before said hearing and served on said officer at least twenty (20) days before said hearing. The director shall have the authority, by and with the consent of the commission, to establish such department divisions and to employ the necessary personnel that may be needed to conduct the work of the department. The state fish and game director shall be paid a salary fixed by the commission and approved by the state board of examiners, and shall be allowed his actual and necessary traveling expenses while away from the seat of government upon official business connected with his office, but in no one (1) year shall he be allowed as expenses a sum in excess of two thousand dollars (\$2,000.00), the same to be paid upon proper vouchers from the fish and game fund of the state.

History: Earlier acts relative to the fish and game warden were Secs. 1949-1979, inc., Rev. C. 1907; these sections together with several acts amendatory thereof were superseded by chapter 193, L. 1921. This section En. Sec. 6, Ch. 193, L. 1921; re-en. Sec. 3655, R. C. M. 1921; amd. Sec. 3,

Ch. 192, L. 1925; amd. Sec. 2, Ch. 59, L. 1927; amd. in part by Sec. 1, Ch. 163, L. 1931, changing the salary of the state fish and game warden; amd. Sec. 1, Ch. 87, L. 1947; amd. Sec. 1, Ch. 81, L. 1951; amd. Sec. 1, Ch. 79, L. 1955.

Liability of Warden

The fish and game warden [director] is not liable in damages for failure to sell fishing licenses to a particular person. *Meinecke v. McFarland*, 122 M 515, 206 P 2d 1012.

References

State ex rel. Nagle v. Sullivan et al., 98 M 425, 40 P 2d 995.

26-106.1. State fish and game warden designated state fish and game director—deputy fish and game wardens designated state fish and game wardens. From and after passage and approval of this act, the state fish and game warden of the state of Montana shall be designated and known as the "state fish and game director," and all deputy state fish and game wardens of the state of Montana shall be designated and known as "state fish and game wardens."

History: En. Sec. 1, Ch. 37, L. 1955.

Compiler's Note

This act was approved by the governor February 23, 1955.

26-106.2. Application of change of name. Upon the effective date of this act the words or designation "state fish and game warden," wherever the same appears in the Revised Codes of Montana, 1947, as amended, shall be construed to mean and refer to the state fish and game director, and the words or designation "deputy state fish and game wardens" wherever the same appears in the Revised Codes of Montana, 1947, as amended, shall be construed to mean and refer to state fish and game wardens.

History: En. Sec. 2, Ch. 37, L. 1955.

26-107. (3656) State game wardens — appointment — qualifications. The director, by and with the consent and approval of the commission, shall have the power to employ, and appoint a deputy director who shall have previously served as a state game warden, and a sufficient number of state game wardens for the proper enforcement of the fish and game laws of the state, and the orders, rules and regulations of the commission, and for such other purposes as the director may designate. State game wardens shall be selected from applicants who have passed such an examination as may be required according to the rules adopted and promulgated by the commission. No person shall be appointed a state game warden until a certificate shall have been issued to him by the commission to the effect that he has passed the required examination and is a fit and proper person to perform the duties of the office. State game wardens employed and appointed by virtue of this act shall be persons who have an interest in protection, conservation and propagation of wildlife, game and furbearing animals, fish and game birds; they shall devote all of their time to their official duties.

History: En. Sec. 7, Ch. 193, L. 1921; 1927; amd. Sec. 1, Ch. 158, L. 1941; amd. re-en. Sec. 3656, R. C. M. 1921; amd. Sec. Sec. 1, Ch. 121, L. 1947; amd. Sec. 1, Ch. 4, Ch. 192, L. 1925; amd. Sec. 3, Ch. 59, L. 58, L. 1951; amd. Sec. 1, Ch. 78, L. 1955.

26-108. (3657) Employees of the commission — removal — rating — salaries—expenses. The director shall have the power to suspend without pay, reduce in rank, or remove any employee at any time for cause, providing that any person who has been continuously employed for one (1) year or more immediately preceding any suspension or discharge may demand and receive a hearing on charges filed before the fish and game commission. The action of the commission resulting from such a hearing shall

be final. The director shall rate all employees on the basis of merit and efficiency in accordance with such rules and regulations as the commission may adopt to secure a proper rating of each person employed. The salaries of employees shall be fixed by the commission and necessary expenses as provided by law shall be allowed while upon official business away from designated headquarters.

History: En. Sec. 8, Ch. 193, L. 1921;
re-en. Sec. 3657, R. C. M. 1921; amd. Sec.
1, Ch. 150, L. 1955.

26-109. (3658) Political activity prohibited. While retaining the right to vote as he may please, and to express his opinions on all political questions, no employee of the fish and game commission shall take any active part in political management or political campaigns, nor shall he use his official authority or influence for the purpose of interfering with an election, or affecting the results, thereof, or for the purpose of coercing or influencing the political actions of any person or body.

History: En. Sec. 9, Ch. 193, L. 1921;
re-en. Sec. 3658, R. C. M. 1921; amd. Sec.
1, Ch. 21, L. 1955.

References

State ex rel. Nagle v. Sullivan et al,
98 M 425, 40 P 2d 995.

26-110. (3659) Qualifications, powers and duties of game wardens.

(1) The deputy state fish and game wardens [state fish and game wardens] employed and appointed by virtue of this act shall be persons who have had experience, training, and skill in protection, conservation, and propagation of wild life, game, and furbearing animals, fish and game birds, and who shall be interested in said work; they shall devote all of their time for which they are appointed, to their official duties.

(2) It shall be their duty to see that the laws of the state of Montana and the laws, orders, rules and regulations of the state fish and game commission with reference to the protection, preservation and propagation of game and furbearing animals, fish and gamebirds are strictly enforced.

(3) It shall be their duty to see that all those who hunt, fish, or take game, or furbearing animals, game birds, or fish, have necessary licenses.

(4) They shall have authority to serve subpoenas issued by any court for the trial of offenses against any of the fish and game laws of the state; they shall have authority to make a search, when they have reasonable cause to believe that any of the game, fish, birds, or quadrupeds, or any parts thereof, have been killed, captured, taken or possessed, in violation of the laws of this state, and without search warrant, to search any tent not used as a residence, boat, car, automobile, or other vehicle, box, locker, basket, creel, crate, gamebag, or other package and the contents thereof to ascertain whether any of the provisions of the laws of this state or the rules and regulations of the fish and game commission, for the protection, conservation or propagation of game and fish or game birds or furbearing animals have been violated, and with a search warrant to search and examine the contents of any dwelling house or other building, to seize and confiscate all game, fish, game birds, and furbearing animals or any parts thereof, possessed in violation of the law, or the orders, rules and regulations of the commission, or showing evidence of illegal taking, and seize and confiscate all devices used in the taking of game and furbearing animals, fish

or game birds illegally, and to hold the same subject to law or the orders of said state fish and game commission; to arrest without warrants any persons committing in their presence any offense against the fish and game laws of the state of Montana, or against any orders, rules and regulations of the commission violation of which has been made a misdemeanor by the provisions of this act, and to arrest without warrant any person who they have reasonable and probable cause to believe has committed any such offense and to take such person immediately before a magistrate having jurisdiction of the same, and to exercise such other powers of peace officers in the enforcement of the fish and game laws of the state, and the orders, rules and regulations of the commission, or of judgments obtained for the violation thereof, not herein specifically provided.

(5) It shall be their duty at all times to assist in the protection, conservation and propagation of fish, game, and furbearing animals, game and nongame birds, and to assist in the planting, distributing, feeding and caring for fish, game and furbearing animals, and game and nongame birds; it shall be their duty when ordered by the state fish and game commission, to assist in the destruction of predatory animals, birds, and rodents; it shall be their duty to do and perform all other duties prescribed from time to time by the state fish and game commission, and to make a monthly report to said commission correctly and truthfully informing the said commission of just what each said deputy fish and game warden [state fish and game warden] has done during each day of the preceding month, with regard to the enforcement of the fish and game laws of this state, showing where his duties called him, and what he was called upon to do, and said report shall contain any pertinent recommendations said deputy [warden] may see fit to make.

(6) No deputy [warden] or special deputy fish and game warden [state fish and game warden] shall have authority to compromise or settle out of court, any violations of the state fish and game laws.

History: En. Sec. 10, Ch. 193, L. 1921; re-en. Sec. 3659, R. C. M. 1921; amd. Sec. 5, Ch. 192, L. 1925.

warden was designated as the state fish and game director and all deputy state fish and game wardens were designated as state fish and game wardens.

Compiler's Note

The bracketed words were inserted by the compiler since by sections 26-106.1 and 26-106.2 the state fish and game

References

Rosenfeld v. Jakways et al., 67 M 558, 564, 216 P 776.

26-111. (3660) Oath and bond of state fish and game director and wardens. (1) Before entering upon his official duties, the state fish and game warden [director] and deputy wardens [wardens] shall take and subscribe the constitutional oath of office and shall in addition thereto swear, or affirm, that he holds no other position or office, nor any position under any political committee or party. Such oath or affirmation shall be filed in the office of the secretary of state.

(2) The state fish and game warden [director] shall execute and file with the secretary of state a bond to the state of Montana in the sum of two thousand dollars, with sureties thereon approved by the state treasurer, and each salaried deputy state fish and game warden [state fish and game warden] shall file a bond with the secretary of state, to the state of Montana, in the sum of one thousand dollars, with sureties thereon approved

by the state treasurer, conditioned for the faithful performance of the duties of their respective offices, and that they, respectively will account for and pay over, pursuant to law, all moneys received by them respectively. The state fish and game warden [director] and each of said deputies [wardens] shall be reimbursed for the premium on said bonds from the state fish and game fund, upon the furnishing of a proper voucher therefor.

History: En. Sec. 11, Ch. 193, L. 1921; re-en. Sec. 3660, R. C. M. 1921.

NOTE.—Bond is given as fixed by sec. 6-101.

Compiler's Note

The bracketed words were inserted by

the compiler since by sections 26-106.1 and 26-106.2 the state fish and game warden was designated as the state fish and game director and all deputy state fish and game wardens were designated as state fish and game wardens.

26-112. (3661) Repealed—Chapter 150, Laws of 1955.

Repeal

This section (Sec. 10, Ch. 193, L. 1921; amd. Sec. 6, Ch. 192, L. 1925; amd. Sec. 1, Ch. 216, L. 1943; amd. Sec. 1, Ch. 119,

L. 1947; amd. Sec. 1, Ch. 133, L. 1951), relating to deputy fish and game wardens, was repealed by Sec. 2, Ch. 150, Laws 1955.

26-113. (3662) Repealed—Chapters 115 and 150, Laws of 1955.

Repeal

This section (Sec. 13, Ch. 193, L. 1921; amd. Sec. 7, Ch. 192, L. 1925), relating to the appointment of special deputy fish and game wardens, was repealed by Sec. 2,

Ch. 115, Laws 1955 and Sec. 2, Ch. 150, Laws 1955. Section 3 of Ch. 115, Laws 1955 revoked all special deputy fish and game warden appointments made prior to Ch. 115, Laws 1955.

26-114. (3663) Sheriffs, constables, peace officers and state forest officers. All sheriffs and their deputies, constables, all peace officers of the state, or any subdivision thereof, and all state forest officers, and such other officers of the United States forest service or agents of the United States fish and wildlife service which are assigned to duty in this state, as the director, with the approval of the state fish and game commission, may appoint are hereby made ex-officio state fish and game wardens, without pay, except that the commission may, in its discretion, allow actual and necessary traveling expenses, which, if allowed, shall be paid upon proper vouchers from the state fish and game funds, and shall have the same powers with reference to the enforcement of the fish and game laws of this state as regularly appointed state fish and game wardens, and it is hereby made their duty to assist, whenever possible, in the enforcement of said laws.

History: En. Sec. 14, Ch. 193, L. 1921; re-en. Sec. 3663, R. C. M. 1921; amd. Sec. 1, Ch. 115, L. 1955.

warden appointments made prior to this act be, and the same are hereby revoked."

Compiler's Note

Section 3 of Ch. 115, Laws 1955 read "That all special deputy fish and game

Collateral References

Sheriffs and Constables 78.

80 C.J.S. Sheriffs and Constables § 35 et seq.

26-115. (3664) Superintendent of state fisheries—appointment and bond. The state fish and game warden [director] shall have general supervision over all hatcheries in the state, and shall with the consent and approval of the commission appoint and employ a superintendent of fisheries, who shall be a competent person and a skilled fish culturist. The output of all state hatcheries shall be used to stock the lakes and streams of the state and shall be for free and impartial distribution within the state,

such distribution to be under the direction of said superintendent of fisheries subject to an official order of the state fish and game warden [director]. The state fish and game warden [director] shall have the power to exchange spawn or fish with other states or persons for distribution in this state. Before entering upon his official duties the superintendent so appointed and employed by said fish and game warden [director] shall execute and file a bond with the secretary of state, in the sum of two thousand dollars (\$2,000.00) with sureties thereon, approved by the state treasurer, to the state of Montana, conditioned for the faithful performance of his official duties, and that he will account for and pay over, pursuant to law, all moneys received by him. He shall be reimbursed for the premium on said bond from the fish and game fund of the state, upon presentation of a proper voucher therefor.

History: En. Sec. 15, Ch. 193, L. 1921; re-en. Sec. 3664, R. C. M. 1921; amd. Sec. 8, Ch. 192, L. 1925; amd. Sec. 2, Ch. 81, L. 1951.

Compiler's Note

The bracketed words were inserted by the compiler since by sections 26-106.1 and 26-106.2 the state fish and game

warden was designated as the state fish and game director and all deputy state fish and game wardens were designated as state fish and game wardens.

Collateral References

Fish[Ⓒ]12.
36 C.J.S. Fish § 31.

26-116. (3665) Superintendent of state fisheries—salary. The superintendent of state fisheries, appointed and employed by the state fish and game warden [director] shall receive for his services a salary fixed by the commission with the approval of the state board of examiners and, in addition, shall be allowed his actual and necessary traveling expenses while absent from his place of residence and upon official business connected with his office, but in no instance shall he be allowed for such expenses a sum in excess of one thousand five hundred dollars (\$1,500.00) in any one year, and such salary and expenses shall be paid from the state fish and game fund on proper vouchers.

History: En. Sec. 16, Ch. 193, L. 1921; re-en. Sec. 3665, R. C. M. 1921; amd. Sec. 9, Ch. 192, L. 1925; amd. Sec. 5, Ch. 59, L. 1927; amd. Sec. 1, Ch. 86, L. 1947; amd. Sec. 3, Ch. 81, L. 1951.

Compiler's Note

The bracketed word was inserted by the compiler since by sections 26-106.1

and 26-106.2 the state fish and game warden was designated as the state fish and game director and all deputy state fish and game wardens were designated as state fish and game wardens.

Collateral References

Fish[Ⓒ]11.
36 C.J.S. Fish § 37.

26-117. (3666) Powers and duties of superintendent of state fisheries. The superintendent of state fisheries with the approval of the state fish and game warden [director] shall have full control of all state fish hatcheries and shall be responsible for their construction, maintenance, and operation. All such construction work done under contract or otherwise, shall be done under control and supervision of said fish and game warden [director]. The superintendent of state fisheries shall have charge of the work of taking and collecting all spawn, the hatching of all spawn and eggs, rearing, propagating and distribution of fry, fingerlings and fish, and with the consent of the state fish and game warden [director], he shall have power and authority to employ such assistance and help as may be necessary in the operating of fish hatcheries of the state, the gathering of eggs, or the per-

formance of any other work in connection with the protection, propagation and distribution of fish and fry. He shall have authority with the consent of the fish and game warden [director], to purchase so many eyed eggs from time to time, as may be necessary in order to keep the hatcheries of the state supplied with eggs and in full operation; provided, however, that the said superintendent shall make every reasonable effort to collect sufficient eggs from the public streams or lakes of this state, to supply said hatcheries, and for that purpose shall have the right and authority to build, equip, and use fish traps and nets at any and all seasons of the year in all public waters of the state. Said superintendent shall have authority when authorized to by the fish and game warden [director], to purchase the eyed eggs of fish not propagated in this state, for the purpose of stocking the waters of this state.

History: En. Sec. 17, Ch. 193, L. 1921; re-en. Sec. 3666, R. C. M. 1921; amd. Sec. 10, Ch. 192, L. 1925; amd. Sec. 4, Ch. 81, L. 1951.

Compiler's Note

The bracketed words were inserted by the compiler since by sections 26-106.1 and 26-106.2 the state fish and game

warden was designated as the state fish and game director and all deputy state fish and game wardens were designated as state fish and game wardens.

Collateral References

Fish 12.

36 C.J.S. Fish § 31.

26-118. (3667) State fish and game commission to control state waters for propagation of fish. From and after the passage of this act, the state fish and game commission is hereby given the right and authority to control the waters of any lake, pond, or stream, which may lie wholly within the limits of the land owned by the state of Montana, so far as the use of said lake, pond or stream for the breeding and propagation of game fish is concerned. Before such right to control any of such lake, pond or stream shall inure to the state fish and game commission, it shall be necessary for the chairman of said commission to notify the state land agent that any such lake, pond or stream is wanted for the purpose herein mentioned, giving a description of the land by legal subdivision when surveyed, or a sufficient general description when not so surveyed, whereupon it shall be the duty of the state land agent to make such entry upon his books and maps as may serve as notice to any lessor or purchaser of the right claimed by the state, in any such lake, pond or stream, and said state land agent shall notify any lessor or purchaser or applicant to lease or purchase of the fact that a right to the use of such lake, pond or stream is so claimed; provided, however, that no such right as is hereby given shall continue for more than one year after such land is sold by the state, and further provided, that should it be found that the right to the control of any such lake, pond or stream heretofore granted lessens the value of said land or prevents the ready sale thereof, that then and in that event the right hereby granted to the state fish and game commission may be terminated upon giving sixty days' notice of such termination to the chairman of the state fish and game commission.

History: En. Sec. 18, Ch. 193, L. 1921; re-en. Sec. 3667, R. C. M. 1921.

26-119. (3668) State fish and game commission shall procure plans for buildings. It shall be the duty of the state fish and game commission of the

state of Montana to procure suitable plans and specifications for any buildings erected by their authority or under authority of the state legislature, when the estimated value or cost of the same shall be more than one thousand dollars, and said commission shall cause said buildings to be built, erected and completed in accordance with such plans and specifications, by contract, said contract to be let after publishing said notice stating the time and place of letting the same, and where plans and specifications may be seen. Said notice shall be published not less than once a week for two weeks prior to the time of letting such contract, in some newspaper of general circulation in the county in which said building is to be erected, and elsewhere if deemed best by said commission, and said commission, if not satisfied with the bids received, or for any other reason, may reject any and all bids received and re-advertise as often as may be necessary. The contract shall be let to the lowest responsible bidder. Any person to whom a contract may be given shall be required to give a good and sufficient bond, conditioned for the faithful performance and completion of such contract, the same to be approved by the commission, or some member of the commission.

History: En. Sec. 19, Ch. 193, L. 1921;
re-en. Sec. 3668, R. C. M. 1921.

Collateral References
States◊86.
81 C.J.S. States § 105.

26-120. (3669) Transfer of funds. All funds, appropriations and moneys provided for the purpose of administering or enforcing the present fish and game laws of this state, and all funds, appropriations and moneys belonging to the fish and game fund of this state, and now under the control or in the possession of any officer, person or department of this state, shall be and hereby are placed under the control of the commission hereby created, and shall be collected and disbursed by said commission, pursuant to existing laws and provisions of this act.

History: En. Sec. 20, Ch. 193, L. 1921;
re-en. Sec. 3669, R. C. M. 1921.

Collateral References
States◊122.
81 C.J.S. States § 154.

Reference

Heiser v. Severy et al., 117 M 105, 117,
158 P 2d 501, 160 ALR 319.

26-121. (3670) State fish and game fund. (1) All sums collected or received from the sale of hunting and fishing licenses or permits, from the sale of seized game or hides, or from fines, damages collected for violations of the fish and game laws of this state, from the appropriations, or received by the commission from any other source, shall be turned over to the state treasurer, and placed by him in a special fund known and designated as the "state fish and game fund," provided, that out of any fines imposed by a court for the violation of this act, the costs of prosecution shall be paid to the county where the trial was held, in any case where the fine is not imposed in addition to the costs of prosecution.

(2) Said fund is hereby exclusively set apart and made available for the payment of all salaries, per diem, fees, expenses and expenditures of every source and kind whatsoever, authorized to be made by the state fish and game commission under the terms of this act, and said funds shall be expended for any and all such purposes, by said commission, subject to the

proper audit and allowance by the state board of examiners and by appropriation by the legislative assembly of each session; provided, however, that all equipment, printing, materials and supplies of every nature required for the administration and operation of the state fish and game commission must be requisitioned for through the state purchasing agent, and the state purchasing agent shall purchase all necessary equipment, printing, materials and supplies of every nature required for the administration and operation of the state fish and game commission, without charge to the commission for such services.

History: En. Sec. 21, Ch. 193, L. 1921; re-en. Sec. 3670, R. C. M. 1921; amd. Sec. 32, Ch. 59, L. 1927; amd. Sec. 1, Ch. 53, L. 1933; amd. Sec. 2, Ch. 114, L. 1945.

Collateral References

States \Rightarrow 127.
81 C.J.S. States § 158.

References

Heiser v. Severy, 117 M 105, 117, 158 P 2d 501, 160 ALR 319.

26-122. (3671) Repealed—Chapter 79, Laws of 1955.

Repeal

This section (Sec. 22, Ch. 193, L. 1921; amd. Sec. 1, Ch. 85, L. 1947; amd. Sec. 5,

Ch. 81, L. 1951), relating to employment of personnel, was repealed by Sec. 2, Ch. 79, Laws 1955, effective February 27, 1955.

26-123. (3672) Salaries, per diem and expenses, how paid. All salaries, per diem, expenses and claims incurred by the state fish and game commission, or any person appointed or employed by them, shall be allowed by the state board of examiners, upon the presentation of proper vouchers therefor, and shall be paid out of the state fish and game funds, upon warrants properly drawn thereon; provided, however, that the aggregate of all salaries, per diem, expenses and claims presented for payment shall not exceed at any time the total amount in said state fish and game fund. The state fish and game commission shall approve all bills properly presented which have been incurred under its authority and by its direct order. The expenses of all deputy state fish and game wardens [state fish and game wardens] shall be approved by the state fish and game warden [director], before they are paid, and the salary, per diem or expenses of any employee employed in the propagation or distribution of fish shall be approved by the superintendent of state fisheries, before they are paid. All items of expense, amounting to more than one and one-half dollars incurred by any one employed in the state fish and game department, shall be evidenced by a proper voucher or receipt, before they shall be approved, allowed, or paid.

History: En. Sec. 23, Ch. 193, L. 1921; re-en. Sec. 3672, R. C. M. 1921.

Compiler's Note

The bracketed words were inserted by the compiler since by sections 26-106.1 and 26-106.2 the state fish and game warden was designated as the state fish and game director and all deputy state fish and game wardens were designated as state fish and game wardens.

Damages for Torts Not Payable as Expenses

The state fish and game fund, composed

of moneys from sale of hunting and fishing licenses, from sale of seized game or hides, and fines and damages collected for violations of fish and game laws and from appropriation by the legislature, is property of the state and moneys therein may not lawfully be used to pay for torts committed by officers or employees of the state fish and game commission for which such officers or employees are personally liable as individual wrongdoers. Heiser v. Severy, 117 M 105, 117, 158 P 2d 501, 160 ALR 319.

26-124. (3673) Reports of state fish and game director. The state fish and game warden [director] shall, on or before the first day of June of each year, make a written report to the state fish and game commission of the operation of his department during the preceding year ending April 30th and the state fish and game commission shall thereafter, and on or before the first day of November of each even numbered year transmit such reports together with a detailed report to the governor, of its work and of moneys collected or received, with the sources thereof, and all disbursements and expenditures, with the details connected therewith, the result of investigations made by it during the preceding two (2) year period with recommendations as to measures to be taken or enacted to conserve and propagate the fish, game, game birds and game, and furbearing animals of the state, and if such recommendation embody legislation, drafts of bills to accomplish the purposes desired.

History: En. Sec. 24, Ch. 193, L. 1921; re-en. Sec. 3673, R. C. M. 1921; amd. Sec. 6, Ch. 81, L. 1951.

Compiler's Note

The bracketed word was inserted by the

compiler since by sections 26-106.1 and 26-106.2 the state fish and game warden was designated as the state fish and game director and all deputy state fish and game wardens were designated as state fish and game wardens.

26-125. (3674) Publication of laws. As soon as practicable after the adjournment of each session of the legislature, the state fish and game warden [director] in co-operation with the attorney general, shall make a compilation of the laws relating to fish, game, game birds and animals, as amended and in force at the date of such compilation, and properly index the same. Copies of said compilation sufficient in number for the purposes of this section, shall be printed in pamphlet form, pocket size. It shall be the duty of the state fish and game warden [director] to distribute to justices of the peace, deputy fish and game wardens [fish and game wardens], and other officers and persons empowered to issue licenses for hunting, fishing and trapping, a supply of such compilation sufficient to permit one copy thereof to be given any one desiring the same. The expense incurred by printing said laws shall be paid out of the state fish and game fund.

History: En. Sec. 25, Ch. 193, L. 1921; re-en. Sec. 3674, R. C. M. 1921.

Compiler's Note

The bracketed words were inserted by the compiler since by sections 26-106.1

and 26-106.2 the state fish and game warden was designated as the state fish and game director and all deputy state fish and game wardens were designated as state fish and game wardens.

26-126. (3675) Duty of attorney general to advise commissioners—prosecuting attorneys to prosecute complaints. The attorney general of the state is the legal adviser of the commission, and shall, together with the several county attorneys, enforce the provisions of this act.

History: En. Sec. 26, Ch. 193, L. 1921; re-en. Sec. 3675, R. C. M. 1921.

Collateral References

Attorney General § 6.
7 C.J.S. Attorney General § 5.

26-127. (3676) Creating fish and game preserves, refuges, sanctuaries, rest grounds, closed districts and closed seasons. Preserves, refuges, sanctuaries, rest grounds, or closed districts made or created by said commission, and any land or water areas or portions thereof, closed by said commission,

shall be conspicuously posted for a period of twenty (20) days, with posters setting forth their purposes and the penalties for violating the orders, rules and regulations of the state fish and game commission applicable to them. Not less than twenty (20) days before any fish and game district, closed district, preserve, refuge, sanctuary, rest ground, so created by said commission, or closure of land or water areas becomes effective, publication shall be made as provided in section 26-128 of the boundaries of such fish and game district, closed district, preserve, refuge, sanctuary or rest ground, so created by said commission, such boundaries to be accurately designated by definite topographic monuments or public land survey. The hunting, pursuing, capturing, killing or taking of any fish or game animals or game birds or furbearing animals in violation of the rules, regulations or orders of the state fish and game commission governing any closed season, fish and game district, refuge, sanctuary, preserve, rest ground or closed land or water area, promulgated by said commission shall be punishable with the same penalties as provided for the violation of the state fish and game laws of this state, regarding closed seasons. All game preserves or refuges heretofore created are continued in full force and effect until such time as the same are changed by the commission in the manner herein designated; provided, that said commission shall have the right, power and authority when properly petitioned to alter, and change the boundaries of, or entirely do away with and abandon any preserve or refuge, excepting the Sun River game preserve, when in the opinion of said commission, it is to the best interest so to do.

History: En. Sec. 27, Ch. 193, L. 1921; re-en. Sec. 3676, R. C. M. 1921; amd. Sec. 1, Ch. 87, L. 1933; amd. Sec. 1, Ch. 145, L. 1937.

Collateral References

Fish 12; Game 3½.
36 C.J.S. Fish § 31; 38 C.J.S. Game § 7.
24 Am. Jur. 373, Game and Game Laws, generally.

26-128. (3677) Posting and publication of orders, rules and regulations of commission. The orders, rules and regulations of the state fish and game commission shall be published and posted in the following manner:

(1) Those having general application throughout the state shall be published in such manner and to such an extent as the state fish and game commission deems necessary and may direct.

(2) Those of general or special character having local application only shall be published once in some newspaper having general circulation in the locality or district wherein such rules, regulations, or orders are applicable, and shall be posted in three conspicuous places in the locality or district in which they are applicable.

History: En. Sec. 28, Ch. 193, L. 1921; re-en. Sec. 3677, R. C. M. 1921; amd. Sec. 11, Ch. 192, L. 1925.

26-129. (3678) Effect of orders, rules and regulations. All orders, rules and regulations for the enforcement of the powers granted to the state fish and game commission shall take effect and be in force, after publication and posting as in this chapter prescribed, and when so published or posted shall constitute legal notice.

History: En. Sec. 29, Ch. 193, L. 1921; re-en. Sec. 3678, R. C. M. 1921.

26-130. (3679) Repealed—Chapter 159, Laws of 1955.**Repeal**

This section (Sec. 30, Ch. 193, L. 1921; amd. Sec. 2, Ch. 87, L. 1933; amd. Sec. 2, Ch. 224, L. 1947), relating to the penalty for violation of fish and game laws,

or orders, rules and regulations of the commission, was repealed by Sec. 2, Ch. 159, Laws 1955. For new penalty provision, see sec. 26-324.

26-131. Preamble concerning Indian treaty of 1855. Whereas, by treaty of July 16, 1855, between the United States of America, represented by Isaac I. Stephens, governor and superintendent of Indian affairs for the Territory of Washington, and the chiefs, headmen and delegates of the confederated tribes of the Flathead, Kootenai and Upper Pend d'Oreille Indians, the said Indians were given the exclusive right to fish and hunt on the Flathead Indian reservation, and the privilege of hunting in their usual hunting grounds on large areas of Montana, and

Whereas, non-members of such tribes have the right to hunt and fish on Indian lands by sufferance of such tribes only, and

Whereas, it appears to be to the common advantage of the state and such Indian tribes that hunting and fishing regulations and privileges on other lands of the state and on Indian lands shall be uniform, and that hunting and fishing on such Indian lands shall be in common with the public, now, therefore

History: En. Preamble, Ch. 198, L. 1947.

Treaty of 1855

Indians were not subject to state fish and game laws on reservation property since under the treaty of 1855 between the Indians of Flathead Reservation and the United States the exclusive right to hunt and fish within the boundaries of the reservation were reserved by the Indians. *State v. McClure*, 127 M 534, 268 P 2d 629. (Dissenting opinion, 127 M 534, 268 P 2d 629, 636.)

The exclusive right to hunt and fish, under the treaty, on all of the lands within the exterior boundaries of the Flathead Indian Reservation was not granted by the United States but was reserved by the

Indians. *State v. McClure*, 127 M 534, 268 P 2d 629, 635. (Dissenting opinion, 127 M 534, 268 P 2d 629, 636.)

The right of hunting and fishing within the boundaries of the reservation was intended to be a continuing one against the United States and its grantees as well as against the state and its grantees. These rights were never alienated and as far as state laws are concerned the Indian tribes bound by the treaty are entitled to hunt and fish therein at any time. The only restriction thereon is the ordinances and laws of their own council and the laws of the United States: *State v. McClure*, 127 M 534, 268 P 2d 629, 635. (Dissenting opinion, 127 M 534, 268 P 2d 629, 636.)

26-132. Authority for commission to make agreement with Indians concerning hunting and fishing. That the state fish and game commission be, and the same is hereby authorized, empowered and enabled to negotiate and conclude an agreement with the council of the Confederated Salish and Kootenai tribes of the Flathead Indian reservation for the purpose of obtaining and establishing for the citizens of Montana, regularly licensed to hunt and fish in the state, the privileges of hunting and fishing on Indian lands on the Flathead Indian reservation, and for the purpose of the conservation and protection of fish, game and furbearing animals on such Indian lands, and on lands adjacent thereto; and for the further purposes of; setting dates for the opening and closing of seasons for hunting and fishing on such lands for Indians and whites alike, opening and closing of streams and land areas for hunting and fishing, and of doing what in its judgment is necessary by way of granting to such tribal Indians state permits to hunt and fish, to be issued without charge to such Indians, of stock-

ing streams and land areas of such Indian lands for the common benefit, of policing such Indian lands for the protection of fish and game, and in general to carry out the purposes of this act. Provided, however, that if any part of such treaty shall provide for the payment of money in the premises to such tribes, such part shall first have the approval of the state legislature.

History: En. Sec. 1, Ch. 198, L. 1947.

26-133. Payments to counties for department owned land—exceptions.

The state fish and game warden [director] shall, on or before the 15th day of October, of each year, prepare and transmit a voucher to the treasurer of each county wherein the state of Montana fish and game department owns any lands acquired by it for its purposes as provided by law, which voucher shall describe the lands situate within the county and state the number of acres in each parcel thereof and shall authorize the drawing of a warrant to the county in a sum equal to the amount of taxes which would be payable on county assessment of said property were it owned by and taxable to a private citizen for the total acreage shown on the voucher. Each county treasurer receiving such a voucher shall execute the same and return it to the state fish and game warden [director], who shall approve it and transmit it to the state auditor. The state auditor shall draw a warrant in the amount shown on each voucher, payable to each county, and shall transmit said warrant to the county treasurer thereof. Such warrant shall be payable out of any funds to the credit of the state fish and game commission: Provided, that no voucher shall include and no payment shall be made to any county wherein the state of Montana fish and game department owns less than one hundred (100) acres, and no voucher shall include and no payment shall be made to any county for any lands owned by the state of Montana fish and game department for game bird farm or fish hatchery purposes.

History: En. Sec. 1, Ch. 1, L. 1951;
amd. Sec. 1, Ch. 188, L. 1953.

Compiler's Note

The bracketed words were inserted by the compiler since by sections 26-106.1

and 26-106.2 the state fish and game warden was designated as the state fish and game director and all deputy state fish and game wardens were designated as state fish and game wardens.

26-134. Allocation of funds to school districts. The county commissioners of any county receiving such funds shall be, and they are, hereby authorized to allocate any portion of such funds to any school district in said county, which school district shall contain any of said lands, in such amounts as they shall determine; and any balance remaining, after allocations have been made to school districts, shall be credited to the general fund of said county.

History: En. Sec. 2, Ch. 1, L. 1951.

CHAPTER 2

FISHING AND HUNTING LICENSES

Section 26-201. Definitions.
26-202. License required.

- 26-202.1. Licenses—fees—classification of licenses—fees and powers under licenses.
- 26-202.2. Special licenses—tagging of carcasses of game animals.
- 26-202.3. Defining resident.
- 26-202.4. Power of fish and game commission to make rules and regulations.
- 26-203. Repealed.
- 26-204. Application for license.
- 26-205 to 26-208. Repealed.
- 26-209. Act construed as providing additional nonresident license.
- 26-210. Bounty claims for wild animals—approval and payment.
- 26-211. Repealed.
- 26-212. Form and contents of licenses.
- 26-213. Carrying and exhibiting license.
- 26-214. Termination of license.
- 26-215. Animals which may be hunted without license—persons under fifteen years of age not required to have license.
- 26-216. Repealed.
- 26-217. Alteration or transfer of license.
- 26-218. Repealed.
- 26-219. Repealed.
- 26-220. License agents—appointment.
- 26-221. Bond of license agent—preferred claim of state for license money.
- 26-222. Compensation—duties.
- 26-223. Appointments nontransferable—revocation—oaths.
- 26-224. Prior appointments affected.

26-201. (3681) Definitions. For the purpose of this act, the following shall be construed, respectively, to mean:

Commission. The state fish and game commission.

Person. The plural or singular, male or female, as the case demands, including individual, associations, partnerships, and corporations, unless the context otherwise requires.

Open season. The time during which game birds, fish, game and furbearing animals may be lawfully taken.

Closed season. The time during which game birds, fish, game and furbearing animals may not be lawfully taken.

Angling or fishing. The taking of, or attempting to take fish by hook and line or rod in hand.

Upland game birds. Sharptailed grouse, blue grouse, prairie chicken, sage hen or sage grouse, foolhen, ruffed grouse, commonly called native pheasant or native partridge, quail, Chinese pheasant and Mongolian pheasant, commonly called ring-necked pheasant, Hungarian partridge, ptarmigan and wild turkey.

Migratory game birds. Waterfowl, including wild ducks, wild geese, brant, and swans; cranes, including little brown, sandhill and whooping cranes; rails, including coots, gallinules, sora or other rails; shore birds, including avocets, curlew, dowitcher, godwits, knots, upland plover, killdeer, sandpipers, Wilson snipes, or jacksnipes, snipes, stilts, plovers, willets and yellow-legs.

Nongame birds. All wild birds not defined herein as upland game birds or migratory game birds, shall be deemed non-game birds.

Game animals. Deer, elk, moose, antelope, caribou, mountain sheep, mountain goat, bear and bison or buffalo.

Furbearing animals. Marten or sable, otter, fox, muskrat, fisher, mink and beaver.

Predatory animals. Coyote, wolf, wolverine, mountain lion, lynx, weasel, skunk and civet-cat, black-footed ferret and bobcat.

Game fish. All species of the family salmonidae (chars, trout, and salmon); all species of the family thymallidae (grayling); all species of the family coregonidae (whitefish); all species of the genus stizostedion (sand pike or sauger and walleyed pike or yellow pike perch); all species of the genus esox (northern pike, pickerel, and muskellunge); all species of the genus micropterus (bass).

History: En. Sec. 1, Ch. 238, L. 1921; re-en. Sec. 3681, R. C. M. 1921; amd. Sec. 3, Ch. 77, L. 1923; amd. Sec. 12, Ch. 192, L. 1925; amd. Sec. 6, Ch. 59, L. 1927; amd. Sec. 1, Ch. 37, L. 1949; amd. Sec. 1, Ch. 36, L. 1951; amd. Sec. 1, Ch. 121, L. 1951; amd. Sec. 1, Ch. 19, L. 1953.

References

State ex rel. Fish and Game Commission v. District Court, 107 M 289, 290, 84 P 2d 798.

Collateral References

Fish 2; Game 2.
36 C.J.S. Fish § 1; 38 C.J.S. Game § 1.

26-202. (3682) License required. It shall be unlawful and a misdemeanor punishable as provided by section 26-324 for any person to pursue, hunt, trap, take, shoot, kill or attempt to trap, take, shoot, or kill, any game animal, or any game bird, or any furbearing animal, or to take, kill, trap, or fish, for any fish within this state, or to have, keep or possess within this state, any game animal, game bird, furbearing animal, or game fish, or parts thereof, except as herein provided or shall be provided by the state fish and game commission, or for any person to pursue, hunt, trap, take, shoot or kill, or attempt to trap, take, shoot or kill, any game animal, game bird, or furbearing animal, or take, kill, trap, or fish for, any fish except at the places and during the periods and in the manner herein defined or shall be defined by the state fish and game commission, or for any person to pursue, hunt, trap, take, shoot or kill, or attempt to trap, take, shoot or kill, any game animal, game bird, or furbearing animal, or take, kill, trap, or fish for, any fish within this state, or have, keep, possess, sell, purchase, ship or reship, any imported or other furbearing animal, or parts thereof, without first having obtained a proper license or permit from the commission so to do.

History: En. Sec. 2, Ch. 238, L. 1921; re-en. Sec. 3682, R. C. M. 1921; amd. Sec. 13, Ch. 192, L. 1925; amd. Sec. 7, Ch. 59, L. 1927; amd. Sec. 3, Ch. 224, L. 1947.

Collateral References

Fish 10(1); Game 5.

36 C.J.S. Fish § 36; 38 C.J.S. Game § 15.
22 Am. Jur. 389, Game and Game Laws, § 22.

Applicability of state fishing license laws or other public regulations to fishing in private lake or pond. 15 ALR 2d 754.

26-202.1. Licenses—fees—classification of licenses—fees and powers under licenses. (1) Class A License. Resident Game Bird and Fishing License. Upon payment of a fee of three dollars (\$3.00) the applicant who qualifies therefor shall receive a Class A license which shall entitle the holder thereof to pursue, hunt, shoot and kill game birds and possess dead bodies of game birds, and to fish with hook and line or rod as authorized by regulations of the commission.

(2) Class A-1 License. Resident Big Game License. Any holder of a Class A license, who is twelve (12) years of age or older, may, upon payment of an additional sum of three dollars (\$3.00), be entitled to a Class

A-1 license, which will entitle the holder to pursue, hunt, shoot and kill game animals and possess the carcass of game animals of the state which are authorized by the commission to be pursued, hunted, shot, killed, taken or possessed.

(3) Class A-2 License—Special Bow and Arrow License. To Pursue, Hunt, Shoot, Kill, Take and Possess Deer. Any holder of a Class A-1 license may, upon payment of an additional sum of two dollars (\$2.00) to any agent of the fish and game commission, authorized to issue fishing and hunting licenses, be entitled to a Class A-2 license, which shall authorize the holder thereof to pursue, hunt, shoot and kill deer with bow and arrow and to possess the carcass of deer during a special season, as same may be designated by the Fish and Game Commission.

(4) Class B License—Nonresident, or a Person Having Less Than Six (6) Months Residence in the State. Any nonresident of the state of Montana or any person who has been a resident citizen for less than six (6) months, upon payment of the sum of ten dollars (\$10.00) to any agent of the fish and game commission authorized to issue fishing and hunting licenses, shall be entitled to a Class B license, which shall entitle the holder thereof to fish with hook and line as authorized by the rules and regulations of the commission.

(5) Class B-1 License—Nonresident and Persons Having Less Than Six (6) Months Residence In the State. Game Bird License. Any nonresident of the state of Montana or any person who has been a resident citizen for less than six (6) months, upon payment of the sum of twenty-five dollars (\$25.00) to any agent of the fish and game commission authorized to issue fishing and hunting licenses shall be entitled to a Class B-1 license, which shall entitle the holder thereof to pursue, hunt, shoot, kill and possess game birds as authorized by the rules and regulations of the commission.

(6) Class B-2 License—Nonresident or Persons Having Less Than Six (6) Months Residence in the State. Big Game License. Any nonresident of the state of Montana, or any person who has been a resident citizen for less than six (6) months, upon the payment of the sum of one hundred dollars (\$100.00) to any agent of the fish and game commission authorized to issue fishing and hunting licenses, shall be entitled to a Class B-2 license which shall authorize the holder to pursue, hunt, shoot, kill game animals, and to possess the carcasses of same, and to pursue, hunt, shoot, kill and possess game birds, and to fish with hook and line as may hereinafter be authorized by the rules and regulations of the commission.

(7) Class B-3 License—Temporary Nonresident or Tourist License. Any nonresident of the state of Montana, upon payment of the sum of three dollars (\$3.00) to any agent of the fish and game commission authorized to issue fishing and hunting licenses, shall be entitled to a temporary nonresident fishing license, which shall authorize the holder to fish with hook and line as authorized by the rules and regulations of the fish and game commission for a period of six (6) days from and after the issuance of such license.

(8) Special Licenses—Any applicant who is the holder of a Class A-1 Resident Big Game License or any applicant who is the holder of a Class B-2 Nonresident Big Game License may apply for a special license, which,

in the judgment of the fish and game commission is to be issued and shall pay the following fees therefor:

Moose, twenty-five dollars (\$25.00).

Mountain Goat, five dollars (\$5.00).

Mountain Sheep, fifteen dollars (\$15.00).

Bison or Buffalo, twenty-five dollars (\$25.00).

(9) **Class C License—Trapper's License.** Any holder of a Class A license, upon making application and paying the sum of ten dollars (\$10.00) to the fish and game commission, shall be entitled to a trapper's license, which shall authorize the holder thereof to trap furbearing animals, except beaver, within the state of Montana at such times and in such manner as may be lawful so to do under the laws of the state and the regulations of the fish and game commission, and at such places as may be designated in said license.

(10) **Class C-1 License—Land Owner's Trapper's License.** Any owner or tenant, or member of the immediate family of said owner or tenant, upon making application to the fish and game commission, and upon payment of the sum of one dollar (\$1.00) shall be entitled to a land owner's trapper's license which shall entitle the holder thereof to trap any furbearing animal, except beaver, on land owned or leased by him, or his immediate family, at such times and in such manner as may be lawful so to do under the laws of the state and the regulations of the fish and game commission and at such places as may be designated in said license.

History: En. Sec. 1, Ch. 267, L. 1955.

Special Nonresident Antelope and Deer Licenses

Chapter 171 of Laws 1955 provided for special nonresident antelope and deer licenses, which act is to expire December 31, 1956. Said act reads as follows: "An act authorizing the state fish and game commission to issue special nonresident antelope and special nonresident deer licenses, fixing the fees, and powers and duties under such licenses.

"Section 1. The state fish and game commission may issue special nonresident antelope licenses and special nonresident deer licenses as provided for in subsection 15 of section 26-104 as amended. Such special licenses will be valid only for the area designated in the license, and shall

expire annually on the thirtieth (30th) day of April. The fee for a special nonresident deer license shall be twenty dollars (\$20.00) and the fee for a special nonresident antelope license shall be twenty dollars (\$20.00). The tagging of game carcasses, as required by law, shall apply to all persons who purchased the special nonresident licenses herein provided. There shall be attached to each special nonresident antelope or deer license a permit which will authorize the holder thereof to ship or transport out of the state one (1) carcass of an animal for which such license was issued.

"Section 2. All acts and parts of acts in conflict herewith are hereby repealed.

"Section 3. This act shall be in full force and effect until December 31, 1956."

26-202.2. Special licenses—tagging of carcasses of game animals. (1) Special licenses authorized to be issued under the general powers of the fish and game commission may be issued only to persons holding valid big game licenses for the current year, which have been obtained by the applicant prior to the time of filing of application for a special license.

(2) Any person who has obtained a moose, mountain sheep, bison, or buffalo license shall not be eligible to apply for another such license for the next succeeding ten (10) years. It is further provided that any person who has received a special license for elk or mountain goat shall not be eligible to receive a second special license for this species of game animal during any license year. However, in the event the number of applications

received is not equal to the number of game species desired to be killed by the commission, reapplication may be made by those valid license holders of the current year who may fall within these limitations. It is further provided that any person who has killed or taken a game animal, except a deer or antelope, during the current license year, shall not be permitted to receive a special license under this act to hunt or kill a second game animal of the same species.

(3) **Tagging of Carcasses of Game Animals.** Every license issued by the fish and game commission authorizing the holder thereof to pursue, shoot, kill, capture, take or possess game animals, whether issued to a resident or a nonresident, shall have attached thereto, certain tags, coupons, or markers, the form of which shall be prescribed by the state fish and game commission, and when any person should take or kill any deer, elk, moose or antelope under such license, such person shall immediately thereafter attach to said animal or animals the proper tag, coupon or other marker, completely filled out with the name of the license holder, address, date the animal was killed, place the animal was killed, and any other information requested on such tag, coupon or other marker, and such tag, coupon or other marker shall be kept attached to said carcass so long as any considerable portion of the carcass remains unconsumed. Such tag, coupon or other marker shall be valid only when attached to said license or when such tag, coupon or other marker has been completely filled out and attached to a legally taken game animal, and when the proper tag, coupon or other marker is attached to said game animal so killed, the same may be possessed, used, stored and transported, provided the necessary permit to transport the same accompanies the shipment. Any person who should kill any deer, elk, moose or antelope by authority of any license issued for the killing of such game animal, and shall fail or neglect to fill out and attach his tag, coupon or other marker so provided with the license issued, to the carcass of said deer, elk, moose or antelope or portion thereof, or any person who shall fail to keep said tag, coupon or other marker attached to said deer, elk, moose or antelope or portion thereof while the same is possessed by him shall be guilty of a misdemeanor and upon conviction thereof shall be punished as provided for by law in section 26-324.

History: En. Sec. 2, Ch. 267, L. 1955.

26-202.3. Defining resident. That in determining a resident for the purpose of issuing resident fishing and hunting licenses, the following provisions shall apply:

(1) That members of the armed forces of the United States, or regularly appointed officers and employees of the United States forest service, the United States fish and wild life service, United States park service and the bureau of land management, who are assigned to duty in Montana, and after a period of thirty (30) days within Montana, upon presenting assignment orders emanating from the proper unit commander, shall be considered residents for the purpose of this act. The thirty (30) day residence requirement is waived in time of war.

(2) Any citizen of the United States of America who has continuously resided within the state of Montana for a period of six (6) months immediately prior to making application for said license, and who is a legal

resident of the state, shall be eligible to receive a resident hunting or fishing license.

(3) Any person in possession of first citizenship papers only shall not be considered a resident citizen of Montana, but such a person may purchase nonresident licenses.

History: En. Sec. 3, Ch. 267, L. 1955.

26-202.4. Power of fish and game commission to make rules and regulations. The fish and game commission is hereby authorized to make, promulgate and enforce such reasonable rules and regulations not inconsistent with the provisions of this act as in its judgment will accomplish the purpose of this act.

History: En. Sec. 4, Ch. 267, L. 1955.

26-203. (3683) Repealed—Chapter 267, Laws of 1955.

Repeal

This section (Sec. 3, Ch. 238, L. 1921; amd. Sec. 8, Ch. 59, L. 1927; amd. Sec. 1, Ch. 161, L. 1931), relating to classes of

licenses, was repealed by Sec. 5, Ch. 267, Laws 1955, effective March 10, 1955. For new provisions, see sec. 26-202.1.

26-204. (3684) Application for license. Such license shall be procured from the state fish and game warden [director], or any deputy state fish and game warden [state fish and game warden], or any authorized agent of the state fish and game warden [director]. The applicant shall state his name, age, occupation, place of residence, post office address, the length of time in the state of Montana, whether a citizen of the United States or an alien, and such other facts, data or descriptions as may be required by the commission. The statements made by the applicant shall be subscribed and sworn to before the officer or agent issuing said license.

Any person who shall swear or affirm to any false statement in the application for a hunting or fishing license, shall be guilty of a misdemeanor, and on conviction thereof, shall be punished as provided in section 26-324.

History: En. Sec. 4, Ch. 238, L. 1921; re-en. Sec. 3684, R. C. M. 1921; amd. Sec. 1, Ch. 84, L. 1947.

fish and game wardens were designated as state fish and game wardens.

Compiler's Note

The bracketed words were inserted by the compiler since by sections 26-106.1 and 26-106.2 the state fish and game warden was designated as the state fish and game director and all deputy state

Refusal to Sell License—Liability

The fish and game warden [director] is not liable in damages for failure to sell fishing licenses to a particular person. *Meinecke v. McFarland*, 122 M 515, 206 P 2d 1012.

26-205. (3685) Repealed—Chapter 267, Laws of 1955.

Repeal

This section (Sec. 5, Ch. 238, L. 1921; amd. Sec. 4, Ch. 77, L. 1923; amd. Sec. 1, Ch. 161, L. 1925; amd. Sec. 14, Ch. 192, L. 1925; amd. Sec. 9, Ch. 59, L. 1927; amd. Sec. 2, Ch. 161, L. 1931; amd. Sec. 1, Ch. 174, L. 1939; amd. Sec. 1, Ch. 215, L. 1947;

amd. Sec. 1, Ch. 32, L. 1949; amd. Sec. 1, Ch. 142, L. 1951; amd. Sec. 1, Ch. 129, L. 1953), relating to the fees for licenses and the tagging of carcasses, was repealed by Sec. 5, Ch. 267, Laws 1955, effective March 10, 1955. For new provisions, see secs. 26-202.1 to 26-202.4.

26-205.1. Repealed—Chapter 267, Laws of 1955.

Repeal

This section (Sec. 2, Ch. 126, L. 1953), relating to a special bow and arrow license

for hunting deer, was repealed by Sec. 5, Ch. 267, Laws 1955, effective March 10, 1955.

26-206 to 26-208. (3685.1 to 3685.3) Repealed—Chapter 267, Laws of 1955.**Repeal**

These sections (Secs. 1 to 3, Ch. 41, L. 1935; amd. Sec. 1, Ch. 174, L. 1939; amd. Sec. 1, Ch. 215, L. 1947; amd. Sec. 1, Ch.

32, L. 1949; amd. Sec. 1, Ch. 218, L. 1953), relating to temporary nonresident fishing licenses, were repealed by Sec. 5, Ch. 267, Laws 1955, effective March 10, 1955.

26-209. (3685.4) Act construed as providing additional nonresident license. This act shall not be construed so as to repeal existing provisions of law for Class B nonresident fishing license, but shall be construed as providing an additional license for nonresidents who wish to limit the period to three days.

History: En. Sec. 5, Ch. 41, L. 1935.

NOTE.—The time limit of license referred to above was changed to conform to the latest amendment of section 26-208 (since repealed).

of the act did not list this section as repealed. It would probably be repealed by implication, however, since the other sections of the act (secs. 26-206 to 26-208) to which it referred to were specifically repealed.

Compiler's Note

Although the title to chapter 185 of Laws 1955 related that it was to repeal section 26-209, among others, yet the body

Collateral References

Fish 9.

36 C.J.S. Fish § 27.

26-210. Bounty claims for wild animals—approval and payment. The fish and game commission shall pay bounty claims for wild animals which have been filed, registered and approved in the office of the livestock commission; the state fish and game commission is empowered to and shall pay out of the state fish and game funds other than those funds derived from license fees paid by hunters and fishermen for bounties on predatory wild animals, as such bounty claims are presented, not exceeding seven thousand five hundred dollars (\$7,500.00) per calendar year.

The livestock commission shall, after the filing, registration and approval of the bounty claim or certificate in its office, deliver the same to the office of the state fish and game commission for rejection or approval. If such claim or certificate is rejected it shall be returned by the fish and game commission to the livestock commission and if approved it shall be delivered to the state board of examiners for allowance or disallowance. Provided, however, that nothing herein shall be construed as taking from the fish and game commission the exclusive power to administer said funds at their discretion.

If the state board of examiners approve and allow any such claim or certificate, they must endorse thereon over their signatures, "Approved for the sum of.....dollars," and transmit the same to the auditor, and the auditor must draw his warrant on the state fish and game fund for the amount so approved and allowed, in favor of the claimant, or his assigns, in the order in which the same is approved.

History: En. Sec. 2, Ch. 174, L. 1939.

26-211. (3687) Repealed—Chapter 88, Laws of 1947.

26-212. (3688) Form and contents of licenses. The form of the license shall be determined and the license blanks prepared by the commission and by it furnished to the officers and persons authorized to issue the same. Said

licenses shall be issued in the name of the commission, and be countersigned by the officer or person issuing the same. Each license issued shall be signed by the licensee in ink or indelible pencil on the face thereof.

History: En. Sec. 8, Ch. 238, L. 1921;
re-en. Sec. 3688, R. C. M. 1921.

26-213. (3689) Carrying and exhibiting license. It shall be unlawful and a misdemeanor punishable as provided by section 26-324 for any person to whom a license or permit has been issued to fish for or take any fish, or pursue, hunt, shoot, kill, or take, any game bird or game animal or attempt to trap, or trap, or take any furbearing animal in this state unless at the time he shall have such license or licenses, or permit, in his possession, and it shall be unlawful to refuse to exhibit the same for inspection to any deputy state fish and game warden [state fish and game warden] or other officer requesting to see the same.

History: En. Sec. 9, Ch. 238, L. 1921;
re-en. Sec. 3689, R. C. M. 1921; amd. Sec.
10, Ch. 59, L. 1927; amd. Sec. 4, Ch. 224,
L. 1947.

warden was designated as the state fish
and game director and all deputy state fish
and game wardens were designated as
state fish and game wardens.

Compiler's Note

The bracketed words were inserted by
the compiler since by sections 26-106.1
and 26-106.2 the state fish and game

Collateral References

22 Am. Jur. 389, Game and Game Laws,
§ 22.

26-214. (3690) Termination of license. Such licenses shall be void after the thirtieth day of April next succeeding their issuance.

History: En. Sec. 10, Ch. 238, L. 1921;
re-en. Sec. 3690, R. C. M. 1921.

26-215. (3691) Animals which may be hunted without license—persons under fifteen years of age not required to have license. The provisions of the act shall not apply to persons pursuing, hunting, capturing, shooting, killing, taking or trapping, or attempting to kill, take or trap predatory animals, prairie dogs, ground squirrels, jack rabbits, gophers, or English sparrows, crows, hawks, fish ducks, blue heron, snow owls, great gray owls, great horned owls, blackbirds, kingfishers, magpies, jays and eagles, which may be pursued, hunted, taken, killed, shot, trapped, possessed or transported at any time; and minors under fifteen (15) years of age may pursue, hunt, shoot, kill, take and capture game birds and fish for and take fish, during the open season without a license.

History: En. Sec. 11, Ch. 238, L. 1921; 11, Ch. 59, L. 1927; amd. Sec. 3, Ch. 161,
re-en. Sec. 3691, R. C. M. 1921; amd. Sec. L. 1931.

26-216. (3691.1) Repealed—Chapter 224, Laws of 1947.

26-217. (3692) Alteration or transfer of license. No person shall at any time alter or change in any material manner, or loan or transfer to another, any license issued in pursuance to the provisions of this act, nor shall any person other than the person to whom it is issued use the same. Any person who shall swear or affirm to any false statement in application for a hunting, fishing or trapping license, shall be guilty of a misdemeanor, and, on conviction thereof, shall be punished as provided by law. Any

false statement contained in any application for such license shall render the license null and void.

History: En. Sec. 12, Ch. 238, L. 1921;
re-en. Sec. 3692, R. C. M. 1921; amd. Sec.
1, Ch. 149, L. 1955.

26-218. (3693) Repealed—Chapter 267, Laws of 1955.

Repeal

This section (Sec. 13, Ch. 238, L. 1921), relating to reports by deputy fish and

game wardens, was repealed by Sec. 5, Ch. 267, Laws 1955, effective March 10, 1955.

26-219. Repealed—Chapter 267, Laws of 1955.

Repeal

This section (Sec. 1, Ch. 208, L. 1945), relating to residents of the state on fur-
lough from the armed forces hunting and

fishing without licenses, was repealed by Sec. 5, Ch. 267, Laws 1955, effective March 10, 1955.

26-220. License agents—appointment. The state fish and game warden [director] shall have authority to appoint license agents as needed to sell state hunting and fishing licenses, according to such rules and regulations as the commission shall prescribe.

History: En. Sec. 1, Ch. 88, L. 1947;
amd. Sec. 1, Ch. 156, L. 1949.

Compiler's Note

The bracketed word was inserted by the compiler since by sections 26-106.1 and

26-106.2 the state fish and game warden was designated as the state fish and game director and all deputy state fish and game wardens were designated as state fish and game wardens.

26-221. Bond of license agent—preferred claim of state for license money. Each appointed license agent shall furnish a corporate surety bond in an amount equal to one thousand dollars (\$1,000.00), or in an amount equal to the value of the licenses received for distribution, said amount to be fixed at the discretion of the state fish and game warden [director]. Said bond shall secure the faithful performance of the duties imposed on the license agent, the accounting for and payment of all moneys received from the sale of hunting and fishing licenses to the state of Montana and that such license agent shall properly account for all unsold licenses annually on April 1st, or at any other time at the request of the state fish and game warden [director].

All money received for the sale of licenses shall at all times belong to the state of Montana, and in case of an assignment for the benefit of creditors, receivership or bankruptcy, the state of Montana shall have a preferred claim against the assets and estate of said license agent for all moneys owing the state of Montana.

History: En. Sec. 2, Ch. 88, L. 1947;
amd. Sec. 1, Ch. 156, L. 1949.

Compiler's Note

The bracketed words were inserted by the compiler since by sections 26-106.1

and 26-106.2 the state fish and game warden was designated as the state fish and game director and all deputy state fish and game wardens were designated as state fish and game wardens.

26-222. Compensation—duties. License agents, except salaried deputy fish and game wardens [state fish and game wardens], shall receive for all services rendered the sum of ten cents (10c) for each license issued. On or before the 10th day of each month each license agent shall submit to the state fish and game warden [director] all duplicates of each class of li-

censes sold during the preceding month and shall accompany such duplicate licenses with lawful remittance of all moneys received for the sale thereof, less a fee of ten cents (10c) for each license sold. Each license agent shall keep his license account open to inspection at all reasonable hours by the state fish and game commission, the state fish and game warden [director], or his deputies [wardens], or the state examiner.

History: En. Sec. 3, Ch. 88, L. 1947;
amd. Sec. 1, Ch. 156, L. 1949.

Compiler's Note

The bracketed words were inserted by the compiler since by sections 26-106.1

and 26-106.2 the state fish and game warden was designated as the state fish and game director and all deputy state fish and game wardens were designated as state fish and game wardens.

26-223. Appointments nontransferable—revocation—oaths. Appointments of license agents shall be nontransferable, and shall be valid only while the licensee is in the business, or in the employ of the business concern, for which appointment has been made, and may be summarily revoked at any time by the state fish and game warden [director] for noncompliance with the provisions of this act or other regulations. Duly appointed license agents are hereby authorized to administer oaths to applicants for hunting and fishing licenses.

History: En. Sec. 4, Ch. 88, L. 1947;
amd. Sec. 1, Ch. 156, L. 1949.

Compiler's Note

The bracketed word was inserted by the compiler since by sections 26-106.1 and

26-106.2 the state fish and game warden was designated as the state fish and game director and all deputy state fish and game wardens were designated as state fish and game wardens.

26-224. Prior appointments affected. All appointments of, or authorizations to, persons or corporations to sell hunting and fishing licenses issued prior to the passage of this act shall be subject to the provisions hereof.

History: En. Sec. 5, Ch. 88, L. 1947;
amd. Sec. 1, Ch. 156, L. 1949.

CHAPTER 3

RESTRICTIONS ON TAKING FISH AND GAME—OPEN AND CLOSED SEASONS

- Section 26-301. Restrictions of manner of taking and possessing fish and game and powers of commission relating thereto.
- 26-302. Big game hunters to wear red garments.
- 26-303. Penalty.
- 26-304. Repealed.
- 26-305. Repealed.
- 26-306. Private artificial lake or pond—stocking—license—bond—reports—restrictions on catching fish—penalty for violation.
- 26-307. Waste of fish or game—hunting or fishing during closed season—killing more than one game animal—exceptions.
- 26-307.1. Penalty.
- 26-308 to 26-314. Repealed.
- 26-315. Taking deer within boundaries of cities or towns unlawful—penalty.
- 26-316. Repealed.
- 26-317. Destroying evidence of sex constitutes misdemeanor.
- 26-318. Repealed.
- 26-319. Penalty for violating closed season on certain game birds—power of commission to open season.
- 26-320. Closed season and bag limits on migratory game birds.
- 26-321. Closed and open season for furbearing animals.
- 26-322. Repealed.

- 26-323. Repealed.
- 26-324. Penalty.
- 26-325 to 26-329. Repealed.
- 26-330. Federal government may conduct fish-hatching operations in state.
- 26-331. Sale of fish or spawn prohibited—exceptions.
- 26-332. Method of catching fish—use of traps, seines and nets—restrictions concerning possession and sale of fish.
- 26-333. Record of seining licenses—refusal of license.
- 26-334. Unlawful to possess net or seine—exceptions.
- 26-335. Use of explosives or poisons in taking fish unlawful—penalty—exceptions.
- 26-336. Definition and use of lakes as navigable waters.
- 26-337. Navigable streams.
- 26-338. Navigable and public waters open to fishing.
- 26-339. Dumping refuse from sawmill into streams.
- 26-340 to 26-343. Repealed.
- 26-344. Restrictions on use of fish as bait—commission must authorize introduction of fish or game.

26-301. (3694) Restrictions of manner of taking and possessing fish and game and powers of commission relating thereto. 1. It shall be unlawful for anyone to take, capture, shoot, kill, or attempt to take, capture, shoot or kill, any game animal, or game bird from any self propelled or drawn vehicle, or on, or from any public highway in the state of Montana, or by the aid or with the use of any set gun, jack-light, or other artificial light, trap, snare, salt lick, nor shall any such set gun, jack-light or other artificial light, trap, snare, salt lick or other device to entrap or entice game animals or game birds be used, made or set, nor may rifles be used to hunt or shoot upland game birds unless the use of rifles is permitted by the commission; provided, however, that this does not prohibit the shooting of wild waterfowl from blinds over decoys with a shotgun only, not larger than a number ten (10) gauge fired from the shoulder, nor shall any game fish be caught, captured, or taken, or attempted to be caught, captured or taken by the aid or with the use of any gun, or trap, nor shall any such set gun, or trap or other device to entrap game fish be used, made, or set.

2. (a) No game birds or game or furbearing animals shall be killed, taken or shot at from any aircraft, nor shall any aircraft be used for the purpose of concentrating, pursuing, driving, rallying or stirring up any game or migratory birds, game or furbearing animals, nor shall any powerboat, sailboat, or any boat under sail or any floating device towed by a powerboat, sailboat, or any boat under sail be used for the purpose of killing, capturing, taking, pursuing, concentrating, driving or stirring up any game birds, or migratory waterfowl, or game or furbearing animals.

(b) No person in an aircraft in the air shall spot or locate any game, or migratory bird, game or furbearing animals and communicate the location or approximate location thereof by any signals whatsoever, whether radio, visual or otherwise, to any person or persons then on the ground.

3. No person shall take into a field or forest, or have in his possession while out hunting, any device or mechanism devised to silence or muffle or minimize the report of any firearms, whether such device or mechanism be operated from or attached to any firearm.

4. No person may use a shotgun to hunt, kill or shoot deer except with loads as specified by the commission.

5. No person shall chase with dogs any of the game or furbearing animals as defined by the fish and game laws of this state; provided, how-

ever, that livestock owners, employees of the state fish and game commission and of the federal fish and wildlife service may use dogs in pursuit of stock-killing bears, or other means of taking stock-killing bears except the use of the dead fall; providing, however, that traps used in capturing bear shall be inspected twice each day, which inspection shall be twelve (12) hours apart; and provided further, that a person may take game birds during the open season thereon with the aid of a dog or dogs and any person or association organized for the protection of game, may run field trials at any time upon obtaining written permission from the state fish and game director.

6. The state fish and game commission shall have the power to designate certain waters where set lines may be used to fish for certain species of game or non-game fish, and the commission may designate the number of hooks and lines and the length of line or lines which may be used as set lines.

7. Game fish shall be taken only by angling, that is by hook and single line in hand or single rod in hand, or within immediate control; this does not prevent, however, the snagging of sockeye salmon when the commission shall declare an open season when sockeye salmon may be taken by snagging, nor the use of landing net or gaff to land a game fish after the same has been hooked by angling as above specified, nor does it prevent the taking of minnows other than game fish variety by the use or aid of a net not to exceed twelve (12) feet in length and three (3) feet in width, in such waters as may be designated by the commission.

8. It is hereby made unlawful for any person, persons, firm or corporation to sell or have in their possession, any salmon eggs or salmon spawn, or any imitations thereof, or substance prepared therefrom, and it shall also be unlawful for any person or persons to use in any of the waters in this state any salmon eggs or other fish spawn, or any imitation or substance prepared therefrom, as a fish bait or fish lure.

9. Whenever said fish and game commission shall have made any orders, rules or regulations for the carrying out of the powers granted to it under this act, the same shall take effect and be in force from and after the publication and posting of notice of said orders, rules and regulations as required by the fish and game laws.

Any person violating any of the provisions of this section shall be deemed guilty of a misdemeanor and shall be punishable as provided by law.

History: En. Sec. 14, Ch. 238, L. 1921; re-en. Sec. 3694, R. C. M. 1921; amd. Sec. 5, Ch. 77, L. 1923; amd. Sec. 15, Ch. 192, L. 1925; amd. Sec. 12, Ch. 59, L. 1927; amd. Sec. 1, Ch. 162, L. 1931; amd. Sec. 1, Ch. 159, L. 1941; amd. Sec. 5, Ch. 224, L. 1947; amd. Sec. 1, Ch. 157, L. 1949; amd. Sec. 1, Ch. 126, L. 1951; amd. Sec. 1, Ch. 223, L. 1953; amd. Sec. 1, Ch. 193, L. 1955.

Cross-Reference

Shooting from or across highways prohibited, sec. 32-21-113.

Collateral References

Fish⇒13(1, 2); Game⇒7.
36 C.J.S. Fish §§ 29, 30; 38 C.J.S. Game §§ 11, 12.

26-302. Big game hunters to wear red garments. It shall be unlawful for any person to hunt any of the big game animals in this state under any of the provisions of the laws of this state without such person wearing a cap or hat, shirt jacket, coat or sweater of a bright red color.

History: En. Sec. 1, Ch. 74, L. 1937.

26-303. Penalty. Any person convicted of a violation of any of the provisions of this act shall be deemed guilty of a misdemeanor and shall be punished by a fine of not less than two dollars and fifty cents (\$2.50) or more than five dollars (\$5.00).

History: En. Sec. 2, Ch. 74, L. 1937.

26-304. (3694.1) Repealed—Chapter 159, Laws of 1955.

Repeal

This section (Sec. 14, Ch. 238, L. 1921; amd. Sec. 5, Ch. 77, L. 1923; amd. Sec. 15, Ch. 192, L. 1925; amd. Sec. 12, Ch. 59, L. 1927; en. as Sec. 2, Ch. 162, L. 1931),

relating to a penalty provision, was repealed by Sec. 2, Ch. 159, Laws 1955. For new general penalty provision, see sec. 26-324.

26-305. (3694.2) Repealed—Chapter 172, Laws of 1951.

Repeal

This section (Sec. 1, Ch. 108, L. 1945), defining "public highway" as used in sec-

tion 26-301, was repealed by Sec. 1, Ch. 172, Laws 1951.

26-306. (3695) Private artificial lake or pond—stocking—license—bond—reports—restrictions on catching fish—penalty for violation. Any person who owns or lawfully controls an artificial lake or pond may apply to the state fish and game warden [director] for a fish pond license. Any holder of a private fish pond license may stock such fish pond with fry procured from any lawful source provided that the state fish and game commission may designate the species of fish which may be released in said pond when said pond is so located that there is a possibility of fish escaping from the pond into adjacent streams or lakes. Such private pond license holder shall have the right to take fish from said lake or pond in any manner. Before any private pond license holder may sell fish or eggs or fry therefrom, he shall be required to furnish a corporate surety bond to the state of Montana in the sum of five hundred dollars (\$500.00), conditioned to the effect that he will not sell fish or spawn taken from fish caught in any of the public waters of this state, and also conditioned to the effect that he will report to the state fish and game warden [director] the quantity of fish, fish eggs, and spawn taken from said lake or pond, said report to be made under oath annually during the month of January each year. A record of all transactions must be kept showing the species and numbers or pounds of fish sold, number and species of eggs sold, number and species of fry sold, name of person or persons to whom sold and date of transaction.

The term "artificial lake or pond" as herein used shall not be construed to include any natural pond or body of water created by natural means, nor any portion of the stream bed or of the lake bed thereof, but shall be limited only to such bodies of water created by artificial means or diversion of water and shall not exceed five hundred acres (500) of surface area.

Any person or persons violating any provision of the act shall be guilty of a misdemeanor and upon conviction thereof shall be punished as provided for in section 26-324.

History: En. Sec. 14A, Ch. 238, L. 1921; re-en. Sec. 3695, R. C. M. 1921; amd. Sec. 6, Ch. 77, L. 1923; amd. Sec. 1, Ch. 43, L. 1929; amd. Sec. 1, Ch. 125, L. 1949.

Compiler's Note

The bracketed words were inserted by the compiler since by sections 26-106.1 and 26-106.2 the state fish and game warden was designated as the state fish and game director and all deputy state

fish and game wardens were designated as state fish and game wardens.

Collateral References

Fish \Rightarrow 5(1), 10(1).
36 C.J.S. Fish §§ 4, 9, 36.

26-307. (3696) Waste of fish or game—hunting or fishing during closed season—killing more than one game animal—exceptions. (1) It shall be unlawful and a misdemeanor for any person responsible for the death of any game animal of this state, excepting grizzly bear, to detach or remove from the carcass only the head, hide, antlers, tusks or teeth, or any or all of aforesaid parts, or to waste any part of any game animal, game bird, or game fish suitable for food, or to abandon the carcass of any game animal in the field, except grizzly bear.

(2) It shall be unlawful and a misdemeanor for any person to kill more than one game animal of any one species, in any one license year, unless the killing of more than one game animal of such species has been authorized by regulations of the fish and game commission.

(3) It shall be unlawful and a misdemeanor for any person during the closed season on any species of game animal, game bird or fish to take, hunt, shoot, kill or capture any such game animal or such game bird or to fish for or catch any such fish.

History: En. Sec. 15, Ch. 238, L. 1921; re-en. Sec. 3696, R. C. M. 1921; amd. Sec. 7, Ch. 77, L. 1923; amd. Sec. 16, Ch. 192, L. 1925; amd. Sec. 13, Ch. 59, L. 1927; amd. Sec. 1, Ch. 152, L. 1931; amd. Sec. 1, Ch. 160, L. 1941; amd. Sec. 1, Ch. 158, L. 1955.

Mere Trespass By Elk No Justification for Killing

In a prosecution for the killing of elk out of season, justification cannot be based upon a mere trespass by the animals, and one who acquires ranch property in the state does so with notice of the presence of wild game and presumably is cognizant of its natural habits, and where defendant pleads justification, the question of the sufficiency of the testimony to show that herds of such animals had repeatedly damaged his property and that future trespasses would virtually amount to confiscation, is one of fact for the jury. *State v. Rathbone*, 110 M 225, 241, 100 P 2d 86.

No Redress from State for Damage Done by Wild Elk

One killing an elk out of season in defense of his property has no redress, in the absence of any provision in the fish and game code authorizing him to do so, for past damages occasioned by their trespasses, since such animals are the property of the state and it may not be

sued by an individual for damages without its consent. *State v. Rathbone*, 110 M 225, 237, 100 P 2d 86.

Regulation Subject to Constitutional Guaranties

On appeal from a conviction of killing an elk out of season, defendant's defense was predicated upon the constitutional guaranties under art. III, secs. 3, 13, and 29, Const. of the right to enjoy and defend one's property; held, under the facts presented, that legal justification may always be interposed as a defense by a person charged with killing a wild animal contrary to law, and that the general law on the right to use force, section 64-210, must be construed in *pari materia* with this section when found inoperative, otherwise this section would be unconstitutional as denying an inalienable right. Reversed and remanded for a new trial. *State v. Rathbone*, 110 M 225, 237, 100 P 2d 86.

References

Rosenfeld v. Jakways et al., 67 M 558, 563, 216 P 776.

Collateral References

Game \Rightarrow 3½.
38 C.J.S. Game § 7.
22 Am. Jur. 388, Game and Game Laws, § 21.

Power of game or fish commission to open or close season. 34 ALR 832.

DECISIONS UNDER FORMER LAW

Commission Empowered to Lengthen Hunting Season

Held, on application for writ of supervi-

sory control to annul a temporary order restraining the state fish and game commission from putting into effect its order

lengthening the hunting season on elk in a certain locality, thus modifying this section fixing the season, that under section 26-104, declaring that the statutes governing "such subjects" should continue in force and effect except as altered or modified by the rules and regulations of the

commission, the legislature so empowered the commission, amounting to modification of existing statutes, hence the restraining order was improper. *State ex rel. Fish and Game Commission v. District Court*, 107 M 289, 292, 84 P 2d 798.

26-307.1. Penalty. Any person violating any of the provisions of this section or any of the orders of the state fish and game commission shall be guilty of a misdemeanor, and upon conviction thereof shall be punished as provided in section 26-324.

History: En. Sec. 2, Ch. 158, L. 1955.

26-308. (3696.1) Repealed—Chapter 102, Laws of 1949.

Repeal

This section (Sec. 1, Ch. 32, L. 1929; amd. Sec. 1, Ch. 152, L. 1931) specifying

the open season for elk in Teton county, was repealed as Sec. 3696.1, Revised Codes 1935 by Sec. 1, Ch. 102, Laws 1949.

26-309, 26-310. (3696.2, 3696.3) Repealed—Chapter 158, Laws of 1955.

Repeal

These sections (Secs. 2, 3, Ch. 32, L. 1929; amd. Sec. 1, Ch. 152, L. 1931; amd.

Sec. 6, Ch. 224, L. 1947), relating to the taking of elk, were repealed by Sec. 3, Ch. 158, Laws 1955.

26-311. (3696.4) Repealed—Chapter 3, Laws of 1953.

Repeal

This section (Sec. 1, Ch. 1, L. 1935; amd. Sec. 1, Ch. 96, L. 1943; and Sec. 1, Ch. 105, L. 1947), relating to the open season

for elk in Park county, was repealed by Sec. 1, Ch. 3, Laws 1953, effective January 28, 1953.

26-312, 26-313. (3696.5, 3696.6) Repealed—Chapter 158, Laws of 1955.

Repeal

These sections (Secs. 2, 3, Ch. 1, L. 1935), relating to the taking of elk in Park

county, were repealed by Sec. 3, Ch. 158, Laws 1955.

26-314. (3697) Repealed—Chapter 158, Laws of 1955.

Repeal

This section (Sec. 16, Ch. 238, L. 1921; amd. Sec. 8, Ch. 77, L. 1923; amd. Sec. 17, Ch. 192, L. 1925; amd. Sec. 13a, Ch. 59, L. 1927; amd. Sec. 1, Ch. 128, L. 1929;

amd. Sec. 2, Ch. 152, L. 1931; amd. Sec. 1, Ch. 123, L. 1933; amd. Sec. 1, Ch. 161, L. 1941), relating to an open season of deer and the taking thereof, was repealed by Sec. 3, Ch. 158, Laws 1955.

26-315. (3697.1) Taking deer within boundaries of cities or towns unlawful—penalty. It shall be unlawful to shoot, kill, take, or cause to be shot, killed, taken or captured, or to attempt to shoot, kill, take or capture, any deer within the boundaries of any incorporated or unincorporated city or town of this state.

Any person violating the provisions of this act shall be guilty of a misdemeanor, and upon conviction thereof shall be punished by a fine of not less than twenty-five dollars (\$25) nor more than five hundred dollars (\$500), or by imprisonment in the county jail for a period of not less than ten (10) days nor more than one hundred and eighty (180) days, or by both such fine and imprisonment, and in addition thereto shall forfeit his fish and game license for a period of one (1) year.

History: En. Sec. 2, Ch. 123, L. 1933.

26-316. (3697.2) Repealed—Chapter 224, Laws of 1947.

26-317. (3698) Destroying evidence of sex constitutes misdemeanor. Any person killing any big game animal within this state who shall destroy such evidence of the sex of any big game animal so killed, as to make the determination of the sex thereof uncertain, shall be guilty of a misdemeanor and upon conviction thereof, shall be punished as provided in section 26-324.

History: En. Sec. 16a, Ch. 238, L. 1921; 18, Ch. 192, L. 1925; amd. Sec. 7, Ch. 224, amd. Sec. 3698, R. C. M. 1921; amd. Sec. L. 1947; amd. Sec. 1, Ch. 99, L. 1949.

26-318. (3699) Repealed—Chapter 158, Laws of 1955.

Repeal season on Rocky Mountain sheep and goats, was repealed by Sec. 3, Ch. 158, Laws 1955.
This section (Sec. 17, Ch. 238, L. 1921; amd. Sec. 9, Ch. 77, L. 1923; amd. Sec. 19, Ch. 192, L. 1925), relating to the closed

26-319. (3700) Penalty for violating closed season on certain game birds—power of commission to open season. It shall hereafter be unlawful for any person to hunt, shoot, kill, capture, or cause to be hunted, killed or captured or attempts to shoot, kill, or capture any quail, Chinese or Mongolian pheasants, commonly called ringneck pheasants, Hungarian partridge, chukar partridge, sage grouse, sharptailed grouse, bluegrouse, fool hen, prairie chicken, ruffed grouse, ptarmigan or wild turkey until such time as the commission shall provide an open season on any quail, Chinese or Mongolian pheasants, commonly called ringneck pheasant, Hungarian partridge, chukar partridge, sage grouse, sharptailed grouse, blue grouse, fool hen, prairie chicken, ruffed grouse, ptarmigan or wild turkey.

Any person violating any of the provisions of this act or any person who has in his possession any of such birds or any part of any such birds, shall be guilty of a misdemeanor and upon conviction thereof shall be punished by a fine of not less than fifty dollars (\$50.00), nor more than two hundred fifty dollars (\$250.00), or by imprisonment in the county jail for not more than sixty (60) days, or by [both] such fine and imprisonment.

History: En. Sec. 18, Ch. 238, L. 1921; re-en. Sec. 3700, R. C. M. 1921; amd. Sec. 10, Ch. 77, L. 1923; amd. Sec. 20, Ch. 192, L. 1925; amd. Sec. 14, Ch. 59, L. 1927; amd. Sec. 1, Ch. 134, L. 1951.

Compiler's Note

The bracketed word "both" was added by the compiler.

References

Rosenfeld v. Jakways et al., 67 M 558, 563, 216 P 776.

26-320. (3703) Closed season and bag limits on migratory game birds. Laws relating to migratory birds are prescribed by the regulations of the United States department of interior and the fish and wildlife service. Open season, bag limit and other rules and regulations are announced each year by proclamation by the president of the United States. After each proclamation, the state fish and game commission by proper action will adopt, advertise and enforce such proclaimed regulations as may be applicable to the state of Montana. Any person or persons violating any provisions of this act shall be guilty of a misdemeanor and on conviction thereof shall be punished as provided by law.

History: En. Sec. 20, Ch. 238, L. 1921; L. 1927; amd. Sec. 1, Ch. 162, L. 1941; re-en. Sec. 3703, R. C. M. 1921; amd. Sec. amd. Sec. 1, Ch. 113, L. 1955. 13, Ch. 77, L. 1923; amd. Sec. 16, Ch. 59,

26-321. (3704) Closed and open season for furbearing animals. It shall hereafter be unlawful and a misdemeanor for any person to shoot, trap, kill, or capture, or cause to be shot, trapped, killed, or captured, or attempt to shoot, trap, kill, or capture any marten or sable, otter, fox, mink, muskrat, beaver, or fisher until such time as the commission shall provide an open season on any marten or sable, otter, fox, mink, muskrat, beaver, or fisher; provided, however, that when it is shown that muskrats or beaver are doing severe injury upon, or are a menace to the structures, canal banks or other works of an irrigation project or district, or stock water pond, any employee or resident land owner on such project or district may kill or trap or cause to be killed or trapped any muskrat or beaver upon or in menacing proximity to the structures, canal banks or other works of such project or district or stock water pond during the closed season on muskrats or beaver, after having secured from the state fish and game director a permit so to do, except that from June first to August thirty-first, both dates inclusive, of each year, no such permit shall be required. The furs and hides of such animals, legally taken during the open season, may be possessed, bought and sold at any time except as hereinafter provided.

Any person trapping marten during the open season thereon shall present all skins or pelts of marten so taken to the game warden residing in the district where the pelts were taken, and shall furnish an affidavit, giving his name, residence, license number, the date and place of capture, and the number of marten so taken, and if the warden is satisfied of the legal taking of the same, he shall attach a numbered metal tag to each skin covered by the affidavit; no charge shall be made for tags and the pelts so tagged may be bought, sold or transported at any time within the state of Montana, but no marten skin shall be exported in any manner from the state without the shipper first obtaining a shipping permit from the state fish and game director, or game warden, the application for which shall show the number on the metal tags attached to said marten skins.

Any person who shall receive or bring into from without the state any marten skin or skins with a numbered metal tag of another state or untagged marten skins coming from without the state where the state in which the marten skins were caught does not require that metal tags be attached before shipment, shall report their arrival within ten (10) days to the state fish and game director and furnish an affidavit setting forth the number of skins, the date of receipt, the name and address of the person from whom procured, the manner or method of transportation into the state, and the numbers designated from the tags, and the name of the state so tagging the same, and it shall not be necessary for such skins to be retagged with a Montana tag nor any other fees paid therefor.

It shall be a misdemeanor, punishable as hereinafter provided, for any person to remove any tag from such skins or to buy, sell or transport untagged marten skins, except as provided in this act, or fail to have tags attached to marten skins as herein provided within twenty (20) days of the expiration date of the open season thereon.

It shall be unlawful and punishable, as in this act hereinafter provided, for any person at any time to wilfully destroy, open or leave open, or partially destroy a house of any muskrat or beaver except that this shall

not prohibit trapping in the house of muskrats when the commission shall authorize such trapping.

Any person trapping furbearing animals or predatory animals for their pelts shall fasten a metal tag to all such traps bearing in legible English the name and address of the trapper, except that no tag shall be required on traps used by landowners trapping with permit on their own land, and irrigation ditch right-of-way contiguous to the land.

Any person violating any of the provisions hereof shall be guilty of a misdemeanor and upon conviction thereof shall be punished as provided by law.

History: En. Sec. 21, Ch. 238, L. 1921; re-en. Sec. 3704, R. C. M. 1921; amd. Sec. 14, Ch. 77, L. 1923; amd. Sec. 22, Ch. 192, L. 1925; amd. Sec. 17, Ch. 59, L. 1927;

amd. Sec. 1, Ch. 95, L. 1943; amd. Sec. 8, Ch. 224, L. 1947; amd. Sec. 1, Ch. 132, L. 1955.

26-322. (3704.1) Repealed—Chapter 267, Laws of 1955.

Repeal

This section (Sec. 1, Ch. 128, L. 1933), relating to a trapper's license, was repealed by Sec. 5, Ch. 267, Laws 1955, effective March 10, 1955. The repeal section repealed "section 26-322 of the Revised

Codes of Montana, 1947, as amended by Chapter 156 of the Session Laws of 1949 * * *." Chapter 156 of Laws 1949 did not amend 26-322 but rather amended sections 26-220 to 26-224.

26-323. (3705) Repealed—Chapter 185, Laws of 1955.

Repeal

This section (Sec. 22, Ch. 238, L. 1921), relating to costs in county prosecution of

violators of fish and game laws, was repealed by Sec. 1, Ch. 185, Laws 1955.

26-324. (3706) Penalty. Any person violating any provision of any statute of the state of Montana pertaining to fish and game, including the provisions of sections 26-101 to 26-1306, and all acts amendatory thereof, or supplementary thereto, or the orders, rules and regulations of the fish and game commission made pursuant to the authority given it under the law, shall, unless a different punishment is expressly provided by law for such violation, be deemed guilty of a misdemeanor and upon conviction shall be punished by a fine of not less than twenty-five dollars (\$25.00) nor more than five hundred dollars, (\$500.00), or by imprisonment in the county jail for not more than six (6) months, or by both such fine and imprisonment, and in addition thereto such person shall, in the discretion of the court, forfeit his license and privilege to hunt, fish or trap within this state for a period of sixteen (16) months from the date of his or her conviction; [or by imprisonment in the county jail for not more than six (6) months, or by both such fine and imprisonment, and in addition thereto such person shall in the discretion of the court, forfeit his license and privilege to hunt, fish or trap within this state for a period of sixteen (16) months from the date of his or her conviction].

History: En. Sec. 23, Ch. 238, L. 1921; re-en. Sec. 3706, R. C. M. 1921; amd. Sec. 23, Ch. 192, L. 1925; amd. Sec. 9, Ch. 224, L. 1947; amd. Sec. 1, Ch. 159, L. 1955.

Collateral References

Fish↔13(1); Game↔7.
36 C.J.S. Fish § 29; 38 C.J.S. Game §§ 11-13.

Compiler's Note

The material in brackets was inclosed in the brackets to show that it is a duplication.

26-325. (3707) Repealed—Chapter 88, Laws of 1947.**26-326 to 26-329. (3708 to 3711) Repealed—Chapter 185, Laws of 1955.****Repeal**

These sections (Secs. 1 to 4, Ch. 38, L. 1913; amd. Sec. 1, Ch. 121, L. 1947; amd.

Sec. 10, Ch. 224, L. 1947), relating to alien gun licenses, were repealed by Sec. 1, Ch. 185, Laws 1955.

26-330. (3712) Federal government may conduct fish-hatching operations in state. The government of the United States, the United States commissioner of fisheries, and its or his duly authorized agent or agents, be and they are hereby authorized, empowered and granted the right to conduct fish-hatching and all operations connected therewith, in any manner and at any time that may by them, or any of them, be considered necessary and proper, at any United States fish cultural station that may hereafter be established by the United States government in the state of Montana.

History: En. Sec. 1, Ch. 9, L. 1913;
re-en. Sec. 3712, R. C. M. 1921.

Collateral References

Fish 12.
36 C.J.S. Fish § 28.

26-331. (3713) Sale of fish or spawn prohibited—exceptions. Every person who in any way catches any of the fish which in this act are classified as "game fish" or who shall remove or cause to be removed the eggs or spawn of any such fish for speculative purposes, for market or for sale, or who shall sell or offer for sale any of the game fish of this state as in this act defined, or the eggs or spawn therefrom shall be deemed guilty of a misdemeanor and shall be punishable as provided by section 26-324, provided, however, that this section shall not apply to fish caught in private ponds by the owners thereof nor to the taking of fish by the state authorities for the purpose of obtaining eggs for propagation in state fish hatcheries, or by any person who receives a permit from the state fish and game commission to take eggs for said purposes.

History: En. Sec. 21, Ch. 173, L. 1917;
re-en. Sec. 3713, R. C. M. 1921; amd. Sec.
11, Ch. 224, L. 1947.

36 C.J.S. Fish § 28.

22 Am. Jur. 704, Fish and Fisheries,
§ 50.

Collateral References

Fish 13(1).

26-332. (3714) Method of catching fish—use of traps, seines and nets—restrictions concerning possession and sale of fish. Every person who takes or catches fish in any of the waters of this state except with hook and line held in hand or line and hook attached to rod or pole held in hand, or who takes or catches fish with hook baited with any poisonous substance or by means of the use of any poisonous substance, including fish berries, or who takes or catches fish by means of the use of fish traps, grab hooks, seines, nets, or other similar means for catching fish, shall be guilty of a misdemeanor and upon conviction thereof, shall be punished as provided for in section 26-324, and the amendments thereto; provided, however, that the Montana fish and game commission shall have the power, authority, and jurisdiction, to designate such waters within the state of Montana, wherein, in the judgment of the members of said commission, traps, seines, or nets may be used for the taking of nongame fish and Dolly Varden trout, and to close such waters so designated at the discretion of the commission, and to

permit the taking of black bass in Flathead lake, the taking of all fish by said means in said waters when so designated to be done under such rules and regulations as said commission may prescribe with reference thereto, and under the supervision of said commission, and all such fish so taken may be possessed and sold in such manner and under such restrictions as said commission may direct, all fish other than those herein designated so taken under said rules and regulations when prescribed by said commission, shall be returned uninjured to the waters from which they were taken.

History: En. Sec. 22, Ch. 173, L. 1917; re-en. Sec. 3714, R. C. M. 1921; amd. Sec. 16, Ch. 77, L. 1923; amd. Sec. 25, Ch. 192, L. 1925; amd. Sec. 18, Ch. 59, L. 1927.

Complaint

Complaint charging offense of unlawfully taking fish from stream held suffi-

cient. State v. Russell, 52 M 583, 584, 160 P 655.

Collateral References

Fish Ⓒ 13 (2).

36 C.J.S. Fish § 30.

22 Am. Jur. 702, Fish and Fisheries, § 48.

26-333. (3715) Record of seining licenses—refusal of license. It shall be the duty of the state game warden [director] to keep a record of all licenses issued by him for the use of a net for the taking of fish, showing the name of the applicant, the date of issue, the waters to be used in, and when revoked (should same be so revoked), and to pay all fees received for such licenses into the state treasury to the credit of the fish and game fund. Should an application be made for a license by any person who has theretofore had a license revoked for cause, it shall be the duty of the state game warden [director] to refuse the same, and no license shall be issued to any person whose license has been revoked for cause.

History: En. Sec. 23, Ch. 173, L. 1917; re-en. Sec. 3715, R. C. M. 1921.

Compiler's Note

The bracketed words were inserted by the compiler since by sections 26-106.1

and 26-106.2 the state fish and game warden was designated as the state fish and game director and all deputy state fish and game wardens were designated as state fish and game wardens.

26-334. (3716) Unlawful to possess net or seine—exceptions. It is unlawful for any person or persons to have in their possession or under their control any seine, net or other similar device for capturing fish. A seine or net found in any vehicle, at the camp, or on the premises of any person shall be prima facie evidence that the said seine, net or similar device belongs to the person or persons occupying said camp or premises; provided, that nothing herein contained shall apply to the owners of private fish ponds, as defined under the statute, nor to a person or persons having unexpired seine or net license, as provided for in the statutes of Montana; provided, further, that nothing herein contained shall apply to the use, by any person, of a landing net used in connection or in addition to pole, line and hooks, in fishing for game fish; and provided, further, that nothing herein contained shall apply to the possession of traps, seines or nets where found in the vicinity of any waters which the fish and game commission have designated within the state, where traps, seines or nets may be used for the taking of nongame fish and Dolly Varden trout, as provided for in the statutes of Montana.

History: En. Sec. 25, Ch. 173, L. 1917; re-en. Sec. 3716, R. C. M. 1921; amd. Sec. 1, Ch. 113, L. 1933.

Collateral References

Fish Ⓒ 13 (2).

36 C.J.S. Fish § 30.

26-335. (3717) Use of explosives or poisons in taking fish unlawful—penalty—exceptions. If any person or persons shall use any carbide, lime, giant powder, dynamite, or other explosive compounds, or any corrosive or narcotic poison or other deleterious substance, or have any of the same in his possession within one hundred (100) feet of any stream where fish are found, for the purpose of catching, stunning or killing fish, he shall be deemed guilty of a misdemeanor and upon conviction thereof shall be punished as provided by law. The provisions of this section shall not apply to anyone duly authorized by the Montana fish and game commission to conduct lake or stream surveys or to control undesirable or overpopulated species of fish.

History: En. Sec. 26, Ch. 173, L. 1917; L. 1933; amd. Sec. 1, Ch. 101, L. 1949; re-en. Sec. 3717, R. C. M. 1921; amd. Sec. amd. Sec. 1, Ch. 114, L. 1955.
24, Ch. 192, L. 1925; amd. Sec. 1, Ch. 82,

26-336. (3717.1) Definition and use of lakes as navigable waters. All lakes, wholly or partly within this state, which have been meandered and returned as navigable by the surveyors employed by the government of the United States, and all lakes which are navigable in fact are hereby declared to be navigable and public waters, and all persons shall have the same rights therein and thereto that they have in and to any other navigable or public waters.

History: En. Sec. 1, Ch. 95, L. 1933.

Collateral References

Navigable Waters↪1(2).
65 C.J.S. Navigable Waters § 7.

26-337. (3717.2) Navigable streams. All rivers and streams which have been meandered and returned as navigable by the surveyors employed by the government of the United States, and all rivers and streams which are navigable in fact are hereby declared navigable.

History: En. Sec. 2, Ch. 95, L. 1933.

26-338. (3717.3) Navigable and public waters open to fishing. Navigable rivers, sloughs or streams between the lines of ordinary high water thereof, of the state of Montana, and all rivers, sloughs and streams flowing through any public lands of the state, shall hereafter be public waters for the purpose of angling, and any rights of title to such streams, or the land between the high water flowlines or within the meander lines of navigable streams, shall be subject to the right of any person owning an angler's license of this state who desires to angle therein or along their banks to go upon the same for such purpose.

History: En. Sec. 3, Ch. 95, L. 1933.

Collateral References

Fish↪3.
36 C.J.S. Fish §§ 6-8.

26-339. (3718) Dumping refuse from sawmill into streams. No person, firm, or corporation operating a sawmill on or near any stream, pond, lake or river, or any person, firm or corporation purchasing from or acting for, with or on behalf of said sawmill operator, shall hereafter dump, drop, cart or deposit, or cause to be dumped, dropped, carted, or deposited, sawdust, bark, shavings, ashes, cinders or other sawmill waste in or near any such stream, pond, lake or river, in such manner or place as will likely result or cause the same to be carried into the waters of any such stream,

pond, lake or river; and any person so doing shall be deemed guilty of a misdemeanor, and, upon conviction, shall be punished as provided by section 26-324.

History: En. Sec. 28, Ch. 173, L. 1917; re-en. Sec. 3718, R. C. M. 1921; amd. Sec. 12, Ch. 224, L. 1947; amd. Sec. 1, Ch. 86, L. 1955.

67 C.J. Waters § 124.

Pollution of oyster beds. 3 ALR 762.

Pollution of stream by mining operations. 39 ALR 891.

Collateral References

Waters and Water Courses⊕68.

26-340. (3719) Repealed—Chapter 159, Laws of 1955.

Repeal

This section (Sec. 34, Ch. 173, L. 1917; amd. Sec. 13, Ch. 224, L. 1947), relating

to the killing of moose, bison, buffalo, caribou or antelope, was repealed by Sec. 2, Ch. 159, Laws 1955.

26-341, 26-342. (3721.1, 3721.2) Repealed—Chapter 158, Laws of 1955.

Repeal

These sections (Secs. 1, 2, Ch. 115, L. 1931; amd. Sec. 14, Ch. 224, L. 1947; amd. Secs. 1, 2, Ch. 86, L. 1951), relating to the killing of game for head, hide, antlers,

tusks, or teeth, and the failure to dress game as prima facie evidence of violation, were repealed by Sec. 3, Ch. 158, Laws 1955.

26-343. (3721.3) Repealed—Chapter 159, Laws of 1955.

Repeal

This section (Sec. 3, Ch. 115, L. 1931), relating to a penalty provision, was re-

pealed by Sec. 2, Ch. 159, Laws 1955. For new general penalty provision, see sec. 26-324.

26-344. (3694.3) Restrictions on use of fish as bait—commission must authorize introduction of fish or game. The state fish and game commission shall have authority to prohibit the use of small fish as bait for catching fish in such waters as the commission shall designate. It shall have the power to promulgate such other regulations as are necessary to insure an adequate supply of fish in said waters, including the power to regulate fishing from boats or other floating devices and to regulate the use of fishing lures and/or baits in all waters of the state.

It shall be unlawful for any person or persons to transplant or introduce any fish or fish eggs into any body of water in the state, and it shall be unlawful for any person or persons to transplant or introduce any species of game birds or game animals into the state of Montana without first having obtained authorization from the fish and game commission.

Any person found guilty of a violation of the provisions of this act shall be guilty of a misdemeanor and upon conviction thereof shall be punished as provided for in section 26-324.

History: Sec. 3694.3, R. C. M. 1935 as added Sec. 1, Ch. 100, L. 1949; amd. Sec. 1, Ch. 153, L. 1951.

Collateral References

Fish⊕8, 13(1).

36 C.J.S. Fish §§ 26, 28.

CHAPTER 4

BEAVER—TRAPPING—LICENSE—PROTECTION

Section 26-401. Protection of beaver—permits and fee—tagging, importing and exporting of skins—expiration of permit—penalty for violation.

26-402. Destruction of beaver for protection of public health.

26-401. (3722) Protection of beaver—permits and fee—tagging, importing and exporting of skins—expiration of permit—penalty for violation. No person shall take, trap, shoot, kill, capture or attempt to take, trap, shoot, kill or capture, or in any way destroy any beaver in the state of Montana, or possess, buy, sell, ship or transport within or without the state, or cause the same to be done, any beaver or any part thereof including skins or hides and castors whether taken within or coming from without the state, except as hereinafter permitted.

Whenever beaver have increased in number to such an extent that in the judgment of the state fish and game commission the number of such beaver should be reduced, the commission shall have the authority to declare an open season on beaver under such rules and regulations as it shall prescribe; provided, however, that nothing herein contained shall authorize trapping on privately owned or leased lands, except with the approval of the landowner or lessee, or as hereinafter provided.

The state fish and game warden [director] may issue a permit to any bona fide owner or lessee of real estate which is being actually and materially damaged by beaver, to trap beaver on his own or leased premises only, and provided that the warden [director] shall, when issuing the permit mentioned, designate therein the maximum number of beaver that may be trapped under such permit. The fee for such permit shall be ten dollars (\$10.00) for ten (10) or less number of beaver and one dollar (\$1.00) per beaver for any number in excess of ten (10). All applications for beaver permits shall be filed with the state fish and game warden [director], between the dates of May first (1st) and September thirtieth (30th) of each year. The term "premises" shall be construed to include any irrigation ditch or right of way appurtenant to the land for which said license or permit is issued.

That the state fish and game warden [director] shall in person or, by deputy [warden], examine the premises and investigate the alleged damage by beaver before issuing a license or permit.

Any person trapping beaver under a license or permit of the state fish and game warden [director] shall properly care for all skins of beaver taken thereunder and as soon as cured shall send to the deputy state fish and game warden [state fish and game warden] residing in this county, or in event of such deputy [warden] being absent or unable to act, then to the nearest deputy [warden] from the place of the trapper's residence, and send to such officer an affidavit giving his name, residence, license or permit number, the date and place of capture, with the number so captured, together with fifty cents (50c) for each skin, and if such officer is satisfied of the legal taking of the same, he shall thereupon immediately forward such affidavit with the money, and a report, to the state fish and game warden [director], and upon the receipt thereof the state fish and game warden [director] shall forward to such deputy [warden] numbered metal tags sufficient in number for one to be attached to each skin covered by the affidavit; upon receipt of such tags the deputy [warden] shall so attach them to the skins and shall receive from the owner ten cents (10c) for each skin so tagged by him, the same to be for his services.

A record of tags so issued shall be kept in the office of the state fish and game warden [director].

Any person who shall receive or bring into from without the state any beaver skin or skins duly tagged with a distinctive numbered metal tag of another state, shall report their arrival within ten (10) days to the state fish and game warden [director] and furnish an affidavit setting forth the number of skins, the date of receipt, the name and address of the person from whom procured, the manner or method of transportation into the state, and the numbers designated on the tags, and the name of the state so tagging the same, and the same shall be accompanied by a fee of fifty cents (50c), and it shall not be necessary for such skins to be re-tagged with a Montana tag, nor any other fees paid therefor.

The state fish and game warden [director] shall keep a record of all skins so reported.

Each metal tag shall remain attached to the beaver skin to which it was originally affixed until it is dressed and manufactured into an article of commerce, or it shall accompany any skin shipped or transported out of the state. It shall be a misdemeanor, punishable as hereinafter provided, to remove a tag from such skins, to duplicate or reproduce such tags for fraudulent purposes or use contrary to the provisions of this act, or to misuse any tag detached from the skin to which it was originally attached.

Beaver skins taken within the state under permit, and those coming from without the state, tagged as herein provided may be possessed, bought, sold or transported at any time within the state of Montana, but no beaver skin or skins may be exported in any manner from the state without the shipper first obtaining an export or shipping permit from the state fish and game warden [director], which may be issued upon application showing the kind and number of the metal tags on said skins and the payment of a fee of sixty cents (60c) for the permit for each shipment.

Any package offered for transportation from the state which contains a beaver skin or skins shall be clearly marked on the outside thereof with the names and addresses of the consignor and consignee, the number and kind of skins contained therein, and the number of the shipping permit.

Any person who shall violate any of the provisions of this section shall be guilty of a misdemeanor, and upon conviction shall be punished as provided by section 26-324. Any beaver skin or skins taken or found in this state or which have been shipped out of this state except as specifically permitted by this section are being hereby declared contraband and shall be seized by the state fish and game warden [director], deputy [warden] or other officer authorized to enforce the provisions of this act. All skins so seized shall be marked or tagged for identification and sold by the state fish and game warden [director] at public auction in the state of Montana, after advertising at least fifteen (15) days prior to the date of sale, and the proceeds therefrom turned into the state treasury to be credited to the fish and game fund.

Beaver trapping permits issued under the provisions of this act shall expire May first (1st) of each year and all beaver skins taken thereunder and not reported and tagged according to the provisions of this section

prior to June first (1st) following, shall be subject to seizure and sale as herein provided.

History: En. Sec. 38, Ch. 173, L. 1917; amd. Sec. 1, Ch. 197, L. 1919; re-en. Sec. 3722, R. C. M. 1921; amd. Sec. 17, Ch. 77, L. 1923; amd. Sec. 19, Ch. 59, L. 1927; amd. Sec. 1, Ch. 167, L. 1935; amd. Sec. 15, Ch. 224, L. 1947; amd. Sec. 1, Ch. 153, L. 1953.

Compiler's Note

The bracketed words were inserted by the compiler since by sections 26-106.1 and 26-106.2 the state fish and game warden was designated as the state fish and game director and all deputy state fish and game wardens were designated as state fish and game wardens.

Operation and Effect

Under this section prohibiting the killing of beaver except as therein provided, and section 26-503, making possession of certain wild animals or parts thereof prima facie evidence that the possessor killed the same, private ownership of beaver pelts is not a matter of common right, but may be acquired only by compliance with the restrictions, and then such ownership is qualified. *Rosenfeld v. Jakways et al.*, 67 M 558, 563, 216 P 776.

Collateral References

Game 5, 7.
38 C.J.S. Game §§ 10, 15.

26-402. (3722A) Destruction of beaver for protection of public health. Whenever complaint is made to the state board of health that beaver are obstructing the free flow of a stream flowing through a settled area and into which sewage of a town or city is dumped, and the obstruction is such as to endanger public health the state board of health shall immediately investigate the facts regarding such complaint and if it finds that the work of the beavers endangers public health, it shall report the facts to the fish and game commission.

It shall thereupon be the duty of the fish and game commission to immediately issue a permit, free of charge, to the landowner upon whose land the beaver dams are located for the removal of the beaver, the number of which shall be designated by the deputy game warden [state fish and game warden] making the inspection. The landowner shall remove all beaver as provided by the permit within ten days after its issuance and shall also within that period remove the dams. Should the landowner refuse to remove the beaver or the dams in the ten-day period, or if he does not desire to do so and so advises the fish and game commission, then the fish and game commission is hereby authorized to remove such beaver by trapping or transplanting and to remove their dam by blasting or other means.

The fish and game commission shall furnish all labor needed to blast out or otherwise remove any such beaver dams. Necessary explosives in such operations shall be furnished by the county in which the beaver dams are located.

History: En. Sec. 1, Ch. 173, L. 1943.

Compiler's Note

The bracketed words were inserted by the compiler since by sections 26-106.1

and 26-106.2 the state fish and game warden was designated as the state fish and game director and all deputy state fish and game wardens were designated as state fish and game wardens.

CHAPTER 5

PROTECTION OF CERTAIN WILD BIRDS—SALE OF CONFISCATED BIRDS AND ANIMALS

Section 26-501. Protection of wild birds other than game birds.
26-502. Destruction of nests or eggs of birds or wild fowl.

- 26-503. Possession of unlawfully killed animals and of unlawful fishing implements—prima facie evidence—penalty.
- 26-504. Use of anchored snare unlawful.
- 26-505. Repealed.
- 26-506. Sale of confiscated birds and animals.
- 26-507. Certificate of sale.
- 26-508. Disposition of proceeds of sale.
- 26-509. Record of confiscated property.

26-501. (3723) Protection of wild birds other than game birds. Any person who at any time shall hunt, capture, kill, possess, purchase, offer or expose for sale, ship, transport or cause to be shipped or transported any wild bird other than a game bird, or any part of the plumage, skin or body of any such bird, irrespective of whether said bird was captured or killed within or without the state, or take or destroy the nest or eggs of any such wild bird, except under a certificate or permit issued by the state fish and game warden [director], shall be guilty of a misdemeanor, and upon conviction thereof shall be punished as provided by section 26-324. The provisions of this section shall not apply to the hunting, trapping, or killing of English sparrows, crows, eagles, hawks, snow owls, great gray owls, great horned owls, blackbirds, kingfishers, magpies and jays and such other birds as the fish and game commission shall designate, or the taking or destruction of their nests and eggs.

History: En. Sec. 41, Ch. 173, L. 1917; re-en. Sec. 3723, R. C. M. 1921; amd. Sec. 18, Ch. 77, L. 1923; amd. Sec. 20, Ch. 59, L. 1927; amd. Sec. 16, Ch. 224, L. 1947.

compiler since by sections 26-106.1 and 26-106.2 the state fish and game warden was designated as the state fish and game director and all deputy state fish and game wardens were designated as state fish and game wardens.

Compiler's Note

The bracketed word was inserted by the

26-502. (3724) Destruction of nests or eggs of birds or wild fowl. Any person who shall wilfully destroy the nests, or carry away the eggs from the nests of any of the birds or wild fowls mentioned in this act, shall be deemed guilty of a misdemeanor, and upon conviction thereof shall be punished as provided by section 26-324.

History: En. Sec. 42, Ch. 173, L. 1917; re-en. Sec. 3724, R. C. M. 1921; amd. Sec. 17, Ch. 224, L. 1947.

26-503. (3725) Possession of unlawfully killed animals and of unlawful fishing implements—prima facie evidence—penalty. The possession of dead bodies, or any part thereof, of any of the game fish, game or nongame birds, game or furbearing animals defined by the fish and game laws of the state of Montana shall be prima facie evidence that such person or persons in whose possession the same are found have killed, caught or taken the same, and the possession of a fishing rod and line, spear, gig or barbed fork, on the banks or shores of a stream or lake shall be prima facie evidence that the person or persons in whose possession the same are found was using the same to fish.

Any person who shall possess, have or hold, or purchase, or keep in storage, or possess for any other purpose, any game fish, game bird, non-game bird, game animal, furbearing animal, or parts thereof, which shall have been unlawfully killed, captured, or taken, or who shall unlawfully

use any fishing rod and line, or fishing lines, spear, gig or barbed fork, shall be guilty of a misdemeanor and punished as provided by section 26-324.

History: En. Sec. 43, Ch. 173, L. 1917; re-en. Sec. 3725, R. C. M. 1921; amd. Sec. 26, Ch. 192, L. 1925; amd. Sec. 21, Ch. 59, L. 1927; amd. Sec. 1, Ch. 41, L. 1931; amd. Sec. 18, Ch. 224, L. 1947.

References

Rosenfeld v. Jakways et al., 67 M 558, 564, 216 P 776.

Collateral References

Fish 15; Game 7, 9.

36 C.J.S. Fish § 43; 38 C.J.S. Game §§ 10, 18.

Right to kill game in defense of person or property. 21 ALR 199.

Constitutionality of statutes making one fact presumptive or prima facie evidence of another. 51 ALR 1139, 1168.

Construction and application of statute making possession of carcass of game, fish or bird, or parts thereof, a criminal offense. 125 ALR 1200.

26-504. (3725.1) Use of anchored snare unlawful. It shall be unlawful for any person to use, or attempt to use, any anchored snare trap for the purpose of snaring any animal or bird.

History: En. Sec. 1, Ch. 23, L. 1933.

26-505. (3725.2) Repealed—Chapter 159, Laws of 1955.

Repeal

This section (Sec. 2, Ch. 23, L. 1933), relating to a penalty provision, was re-

pealed by Sec. 2, Ch. 159, Laws 1955. For new general penalty provision, see sec. 26-324.

26-506. (3726) Sale of confiscated birds and animals. All birds, animals, fish, heads, hides, teeth, or other parts of any animal seized by any officer as herein provided, shall be sold, under the direction of the state game warden [director] or his deputies [wardens], at a time, place, and manner so as to receive the highest price therefor. Such sales shall be made at public auction to the highest and best bidder, and the game warden [director] or his deputies [wardens] shall give notice of the time and place of such sale, together with a description of the bird, or birds, fish, animal or animals, or parts or portions of animals to be so sold by one publication, at least, in a newspaper of general circulation published in the county where such sale is noticed to be held, and the date of sale shall not be less than five nor more than thirty days after the last date of such publication; provided, that in cases where the property seized is perishable, the same may be sold by such officers without publishing a notice thereof, upon such public notice, and under such terms and conditions as, in the discretion of the officers, may seem conducive to secure the full value thereof.

History: En. Sec. 47, Ch. 173, L. 1917; re-en. Sec. 3726, R. C. M. 1921.

Compiler's Note

The bracketed words were inserted by the compiler since by sections 26-106.1 and 26-106.2 the state fish and game warden was designated as the state fish and game director and all deputy state fish and game wardens were designated as state fish and game wardens.

References

Rosenfeld v. Jakways et al., 67 M 558, 564, 216 P 776.

Collateral References

Fish 16; Game 10.

36 C.J.S. Fish § 42; 38 C.J.S. Game § 17.

26-507. (3727) Certificate of sale. Upon the sale of such property, the officer shall issue a certificate to the party purchasing the same, certifying that the purchaser has the legal right to be in possession of the same, and anyone so acquiring said property from the state shall have the right to

deal therewith without further question with respect to violation of the law, anything herein to the contrary notwithstanding.

History: En. Sec. 48, Ch. 173, L. 1917;
re-en. Sec. 3727, R. C. M. 1921; amd. Sec.
27, Ch. 192, L. 1925.

References
Rosenfeld v. Jakways et al., 67 M 558,
564, 216 P 776.

26-508. (3728) Disposition of proceeds of sale. The money obtained upon the sale of such property shall be paid over to the court before whom the person having the same in possession at the time of seizure is prosecuted, or in which prosecution is pending, and if the person charged with violation of the law is found guilty before said court of violation of the fish and game laws of the state, the money received for the sale of said property shall be paid over to the state treasurer, and be deposited by him to the credit of the fish and game fund; but should it be found that the party from whom the same was taken was not guilty of any violation of the fish and game laws of this state, said money shall be paid to the party from whom said birds, animals, fish, or parts or portions thereof were taken. No officer shall be liable for any damage on account of any search, examination, seizure, or sale as herein provided. Where wild animals, game birds, or fish are seized as in this act provided, and the person or persons who killed or captured the same cannot be ascertained, then the money so received from the sale of such animals, game birds, or fish shall be paid direct to the state treasurer. The cost of advertising notice of sale, as herein required, shall be paid from the fish and game fund.

History: En. Sec. 49, Ch. 173, L. 1917;
re-en. Sec. 3728, R. C. M. 1921.

26-509. (3729) Record of confiscated property. It shall be and is hereby made the duty of the state game warden [director], and of every deputy game warden [state fish and game warden], to make a full and complete record of all property by them, or either of them, confiscated because of a violation of the game and fish laws of this state, showing in detail a description of the property, the person from whom it was confiscated, the price received therefor upon public sale, and the disposition of the money. The state game warden [director] shall keep in his office a permanent record showing all property confiscated by him or any of his deputies [wardens], and the disposition made thereof under the provisions of this act.

History: En. Sec. 50, Ch. 173, L. 1917;
re-en. Sec. 3729, R. C. M. 1921.

Compiler's Note

The bracketed words were inserted by the compiler since by sections 26-106.1

and 26-106.2 the state fish and game warden was designated as the state fish and game director and all deputy state fish and game wardens were designated as state fish and game wardens.

CHAPTER 6

POWER OF COMMISSION TO DISPOSE OF GAME ANIMALS DAMAGING PROPERTY AND OVERSUPPLY OF FISH IN LAKE COUNTY

(Repealed—Section 8, Chapter 20, Laws of 1953, Section 1, Chapter 185, Laws of 1955 and Section 2, Chapter 157, Laws of 1955)

26-601 to 26-603. (3729.1 to 3729.3(A)) Repealed—Chapter 20, Laws of 1953.**Repeal**

These sections (Secs. 1, 2, Ch. 72, L. 1933; Sec. 1, Ch. 145, L. 1945; amd. Sec. 1, Ch. 152, L. 1943; amd. Sec. 1, Ch. 146, L. 1945; amd. Sec. 1, Ch. 57, L. 1947), re-

lating to the power of the fish and game commission to dispose of certain game animals which were increased in number and damaging property, were repealed by Sec. 8, Ch. 20, Laws 1953.

26-604. (3729.3) Repealed—Chapter 185, Laws of 1955.**Repeal**

This section (Sec. 3, Ch. 72, L. 1933), relating to the disposal of increased num-

bers of fish in Lake county, was repealed by Sec. 1, Ch. 185, Laws 1955.

26-605. Repealed—Chapter 20, Laws of 1953.**Repeal**

This section (Sec. 1, Ch. 136, L. 1947), relating to the power of the fish and game commission to dispose of deer which were

increasing in number and destroying property, was repealed by Sec. 8, Ch. 20, Laws 1953.

26-606 to 26-612. Repealed—Chapter 157, Laws of 1955.**Repeal**

These sections (Secs. 1 to 7, Ch. 20, L. 1953), relating to special permits for the

killing of game animals when increasing in numbers, were repealed by Sec. 2, Ch. 157, Laws 1955, effective March 3, 1955.

CHAPTER 7

SHIPMENT OF ANIMALS FROM STATE

- Section 26-701. Removal of animals or parts of animals from state unlawful, when.
- 26-702. Permit to resident to ship, take, or transport in any manner game animals, upland game birds, migratory game birds, game fish, furbearing animals or the skins of furbearing animals or parts thereof from state.
- 26-703. Permit to nonresident to remove fish, animals or parts of animals from state.
- 26-704. Labeling of packages for shipment from state.
- 26-705. Violations of provisions relating to shipment—penalty—confiscation.
- 26-706. Repealed.
- 26-707. Fee for issuing shipping permits—disposal of.

26-701. (3730) Removal of animals or parts of animals from state unlawful, when. It is hereby declared to be unlawful and a misdemeanor, punishable as provided by section 26-324, for any person or persons to ship or take out of the state any of the game or nongame birds, fish, game animals, furbearing animals or the skins of furbearing animals, or any parts thereof, which are mentioned in this act whether taken within or coming from without the state, except the same be done in the manner provided for by sections 26-701, 26-702 and 26-703.

History: En. Sec. 51, Ch. 173, L. 1917; re-en. Sec. 3730, R. C. M. 1921; amd. Sec. 19, Ch. 77, L. 1923; amd. Sec. 22, Ch. 59, L. 1927; amd. Sec. 19, Ch. 224, L. 1947.

Collateral References

Fish 5; Game 7.

38 C.J.S. Game § 16.

24 Am. Jur. 389, Game and Game Laws, §§ 24, 25.

Statutes or regulations regarding possession, transportation, or sale within state of fish or game taken outside of state as interference with foreign or interstate commerce. 92 ALR 1266.

Validity, construction, and application of statutes and other regulations relating to transportation or disposal of carcasses of dead animals not slaughtered for food. 121 ALR 732.

26-702. (3731) Permit to resident to ship, take, or transport in any manner game animals, upland game birds, migratory game birds, game fish, furbearing animals or the skins of furbearing animals or parts thereof from state. Any resident of this state who desires to ship, take or transport in any manner out of the state any game animals, upland game birds, migratory game birds, game fish, furbearing animals, or the skins of furbearing animals, or parts thereof, legally taken or killed in the state during the open season therefor shall first procure a permit from the state fish and game director, said permit stating the name of the consignee and the consignor, if shipped, destination and number and kind of upland game birds, migratory game birds, game animals, game fish, furbearing animals, or the skins from furbearing animals, or parts thereof, said permit to be kept with said upland game birds, migratory game birds, game animals, game fish, furbearing animals, or the skins from furbearing animals, or parts thereof, until the same have reached their destination, and if said upland game birds, migratory game birds, game animals, game fish, furbearing animals, or the skins from furbearing animals, or parts thereof, are to be shipped, said permit shall be presented to the transportation company with consignment.

History: En. Sec. 52, Ch. 173, L. 1917; re-en. Sec. 3731, R. C. M. 1921; amd. Sec. 20, Ch. 77, L. 1923; amd. Sec. 23, Ch. 59, L. 1927; amd. Sec. 1, Ch. 116, L. 1955.

Collateral References

Fish⊕10(1); Game⊕5.
36 C.J.S. Fish § 36; 38 C.J.S. Game § 15.

26-703. (3732) Permit to nonresident to remove fish, animals or parts of animals from state. There shall be attached to all nonresident fishing licenses, a permit authorizing the holder thereof to ship, remove or cause to be removed from the state one legal limit of fish legally taken or killed; provided such shipping permit shall not be valid if detached from such license prior to its use to authorize shipment of fish.

Any nonresident when applying for a limited fishing license, shall certify under oath whether he has shipped, removed or caused to be removed from the state during the current year, the legal limit of fish or game or has in his possession a permit for so doing. If such applicant certifies that he has removed or caused to be removed from the state, the legal limit of fish or game, during the current year, or has in his possession a permit for so doing, then the shipping permit heretofore provided for shall be detached from such permit and be retained and destroyed by the issuing authority.

Any nonresident person who desires to ship, remove or cause to be removed from the state, any game animals, game birds, or any part thereof lawfully taken or killed, shall possess or obtain a shipping permit, and shall present the same to the transportation company, together with his license and the consignment of game to be shipped, provided that no nonresident person may during any one year make more than one shipment, not to exceed the legal limit of fish and game. Provided, any person who removes from the state any game animals, game birds, fish or any part thereof by means of a truck, automobile or airplane, shall have in his possession a shipping permit. Provided, further, that any nonresident who desires to ship or take out of the state, any furbearing animals, or the skins from furbearing animals, or parts thereof, legally acquired, shall first procure a permit from the state fish and game warden [director], said permit stating

the name of the consignee and consignor, destination and number and kind of furbearing animals, or the skins from furbearing animals that are to be shipped, and said permit shall be presented to the transportation company with the consignment. Provided, further, that any nonresident who has lawfully taken any game animals, game birds, fish or any part thereof, in an adjoining state, and is compelled, by reason of mountainous country or other local conditions, to carry and transport said game animals, game birds, fish or any part thereof, over and across this state in order to return with said game animals, game birds, fish or any part thereof, to said adjoining state in which said game was taken, may do so provided he has the necessary license for the taking thereof issued by the state in which the game animals, game birds, fish or furbearing animals were taken.

History: En. Sec. 53, Ch. 173, L. 1917; re-en. Sec. 3732, R. C. M. 1921; amd. Sec. 21, Ch. 77, L. 1923; amd. Sec. 24, Ch. 59, L. 1927; amd. Sec. 1, Ch. 226, L. 1943; amd. Sec. 1, Ch. 102, L. 1945; amd. Sec. 1, Ch. 182, L. 1947.

Compiler's Note

The bracketed word was inserted by the compiler since by sections 26-106.1 and 26-106.2 the state fish and game warden was designated as the state fish and game director and all deputy state fish and game wardens were designated as state fish and game wardens.

26-704. (3733) Labeling of packages for shipment from state. All shippers of fish, game or nongame birds, game animals, furbearing animals, or the skins of furbearing animals or predatory animals, or parts thereof are hereby required to label all packages offered for shipment by parcel post, common carrier or otherwise, such label to be securely attached to the address of the package and plainly indicate the names and addresses of the consignor and consignee and the complete contents of said package. All persons violating any of the provisions of this act shall be deemed guilty of a misdemeanor, and upon conviction, shall be punished in the manner provided by sec. 26-324.

History: En. Sec. 54, Ch. 173, L. 1917; re-en. Sec. 3733, R. C. M. 1921; amd. Sec. 22, Ch. 77, L. 1923; amd. Sec. 28, Ch. 192, L. 1925; amd. Sec. 25, Ch. 59, L. 1927; amd. Sec. 20, Ch. 224, L. 1947.

Collateral References

Fish⇒13(1); Game⇒7.
36 C.J.S. Fish § 28; Game § 13.

26-705. (3734) Violations of provisions relating to shipment—penalty—confiscation. No person or persons, or the agent or employee of any common carrier, association, stage, express, railway or transportation company, shall transport or receive for transportation or carriage or sell or offer for sale any of the game animals, game or nongame birds, fish, furbearing animals, or the skins of furbearing animals, or parts thereof, except as specifically provided for by this act, and all game or nongame birds, fish, game animals, or furbearing animals, or parts thereof, had in possession, or which have been shipped or are being transported in violation of any of the provisions of this act, shall be seized, confiscated, and disposed of as provided by law. Any person violating any of the provisions of this act shall be guilty of a misdemeanor and punished in the manner provided by section 26-324.

History: En. Sec. 55, Ch. 173, L. 1917; re-en. Sec. 3734, R. C. M. 1921; amd. Sec. 26, Ch. 59, L. 1927; amd. Sec. 21, Ch. 224, L. 1947.

Collateral References

Fish⇒16; Game⇒10.
36 C.J.S. Fish § 42; 38 C.J.S. Game § 17.

26-706. (3735) Repealed—Chapter 146, Laws of 1955.**Repeal**

This section (Sec. 56, Ch. 173, L. 1917; amd. Sec. 29, Ch. 192, L. 1925; amd. Sec.

22, Ch. 224, L. 1947), relating to transporting or selling illegally taken fish, was repealed by Sec. 2, Ch. 146, Laws 1955.

26-707. (3736) Fee for issuing shipping permits—disposal of. The state fish and game warden [director] shall make a charge of sixty cents (\$.60) for each and every shipping permit issued by him for the shipment of game or nongame birds, fish, game, animals, or furbearing animals, or parts thereof, out of the state. Persons authorized to sell hunting and fishing licenses shall also have authority to sell shipping permits and of this fee ten cents (\$.10) shall be paid to the person who sells the shipping permit and the balance shall be turned over to the state treasurer at the time and in the manner provided by law, and the state treasurer shall place such money to the credit of the state fish and game fund.

History: En. Sec. 57, Ch. 173, L. 1917; re-en. Sec. 3736, R. C. M. 1921; amd. Sec. 27, Ch. 59, L. 1927; amd. Sec. 1, Ch. 171, L. 1943.

compiler since by sections 26-106.1 and 26-106.2 the state fish and game warden was designated as the state fish and game director and all deputy state fish and game wardens were designated as state fish and game wardens.

Compiler's Note

The bracketed word was inserted by the

CHAPTER 8**MISCELLANEOUS PROHIBITIONS**

- Section 26-801. Lawful for merchants, hotels or restaurants to possess and sell game not killed within state.
- 26-802. Evidence of lawful possession of game must be produced, when.
- 26-803. Record to be kept by persons having in possession or offering game for sale.
- 26-804. Noncompliance with law a misdemeanor.
- 26-805. Definitions.
- 26-806. Unlawful to buy, sell, possess or transport fish, game birds, game animals, or furbearing animals, or parts thereof—exceptions—penalty.
- 26-807. Repealed.
- 26-808. Meaning of word "sale" in game and fish laws.
- 26-809. Bag limit prizes for game or fish taken unlawful—exception.
- 26-810. Repealed.

26-801. (3737) Lawful for merchants, hotels or restaurants to possess and sell game not killed within state. It shall be lawful for any merchant, hotel, or restaurant keeper to have in his possession, and to offer for sale, and to sell game and game birds; provided, that said game and game birds are not and have not been killed within the state of Montana.

History: En. Sec. 58, Ch. 173, L. 1917; re-en. Sec. 3737, R. C. M. 1921.

26-802. (3738) Evidence of lawful possession of game must be produced, when. It shall be the duty of every merchant, hotel, and restaurant keeper, having in his possession and offering for sale any game or game birds, to produce upon demand, for the inspection of any game warden or deputy game warden or sheriff, the receipt or record and shipping and transportation receipts required hereby to be kept by him, and a failure or refusal to produce the same upon demand, coupled with the possession

and offering for sale of game or gamebirds, shall constitute prima facie evidence of the violation of this act.

History: En. Sec. 59, Ch. 173, L. 1917;
re-en. Sec. 3738, R. C. M. 1921.

26-803. (3739) Record to be kept by persons having in possession or offering game for sale. It shall be the duty of every person having in his possession and offering for sale any game or game birds to keep a record showing the amount and kind of game and game birds received by him, together with shipping and transportation receipts showing the true time and place of shipment of said game and game birds, and the name of the person shipping same; provided, however, that any merchant in Montana selling game or game birds to any hotel or restaurant keeper or other person shall, in addition to the record and receipts heretofore required to be kept by him, keep a record of the date of sale, kind, and amount of game or game birds, and the name of the purchaser; and provided, further, that in the case of hotel and restaurant keepers, or other persons buying game or game birds from a merchant within the state of Montana, a receipt from the said merchant showing the date, amount, and kind of game or game birds purchased shall be sufficient evidence of compliance with the provisions of this act by such hotel or restaurant keeper or other person.

History: En. Sec. 60, Ch. 173, L. 1917;
re-en. Sec. 3739, R. C. M. 1921.

26-804. (3740) Noncompliance with law a misdemeanor. Any person who shall have in his possession, and offer for sale, or sell any game or game birds without having complied with the provisions of this act relating to the keeping of a record and shipping and transportation receipts, shall be guilty of a misdemeanor and punished in the manner provided by section 26-324.

History: En. Sec. 61, Ch. 173, L. 1917;
re-en. Sec. 3740, R. C. M. 1921; amd. Sec.
23, Ch. 224, L. 1947.

26-805. (3741) Definitions. In the construction of this act the words "game" and "game birds" or parts of the same, shall be construed to mean the game animals and game birds, the killing of which is restricted or forbidden by the laws of Montana; and the words "merchant," "hotel and restaurant keeper," shall include each and every manager, servant, agent, and employer of such person.

History: En. Sec. 62, Ch. 173, L. 1917;
re-en. Sec. 3741, R. C. M. 1921; amd. Sec.
30, Ch. 192, L. 1925.

Collateral References

Game—2, 4.
38 C.J.S. Game §§ 1, 8.

26-806. (3742) Unlawful to buy, sell, possess or transport fish, game birds, game animals, or furbearing animals, or parts thereof—exceptions—penalty. It is hereby made unlawful for any person to purchase, sell, offer to sell, possess, ship, or transport any game fish, game bird, migratory game bird, game animal or furbearing animal or part thereof, protected by the laws of this state, whether belonging to the same or different species from that native to the state of Montana, except as specifically permitted by the laws of this state. The provisions of this section shall not prohibit

the possession or transportation within the state of any legally taken fish, game bird, migratory game bird, game animal or furbearing animal, or part thereof, nor the sale, purchase, or transportation of hides, heads or mounts of lawfully killed game animals, game birds, game fish or furbearing animals. Any person violating any of the provisions of this section shall be deemed guilty of a misdemeanor, and upon conviction thereof, shall be punished as provided by law.

History: En. Sec. 63, Ch. 173, L. 1917; amd. Sec. 1, Ch. 142, L. 1919; re-en. Sec. 3742, R. C. M. 1921; amd. Sec. 23, Ch. 77, L. 1923; amd. Sec. 28, Ch. 59, L. 1927; amd. Sec. 1, Ch. 115, L. 1939; amd. Sec. 2, Ch. 22, L. 1941; amd. Sec. 24, Ch. 224, L. 1947; amd. Sec. 1, Ch. 146, L. 1955.

26-807. (3742.1) Repealed—Chapter 159, Laws of 1955.

Repeal

This section (Sec. 29, Ch. 59, L. 1927), relating to a penalty provision, was re-

pealed by Sec. 2, Ch. 159, Laws 1955. For new general penalty provision, see sec. 26-324.

26-808. (3743) Meaning of word "sale" in game and fish laws. The word "sale," as used in the statute laws of this state touching the sale of game and fish, the sale of which is prohibited by law, does and shall be considered to mean:

1. A contract by which, for a pecuniary consideration called a price, one transfers an interest in either game or fish.

2. A contract by which, for an article or thing of value, one transfers, barter, or exchanges an interest either in game or fish.

History: En. Sec. 64, Ch. 173, L. 1917; re-en. Sec. 3743, R. C. M. 1921.

Collateral References

Fish \Rightarrow 13(1); Game \Rightarrow 7.

36 C.J.S. Fish § 28; 38 C.J.S. Game § 10.

26-809. (3744.1) Bag limit prizes for game or fish taken unlawful—exception. That it shall be unlawful for any person, firm, corporation, association or club to offer or give any prize, gift or anything of value in connection with, or as a bag limit prize for, the taking, capturing, killing or in any manner acquiring any game, fish, fowl, furbearing animals, or any fish, bird or animal now, or that shall be hereafter, protected in any way by the fish and game laws of the state of Montana.

This act shall not be construed to prohibit the award of prizes for any one game bird, animal, fish or furbearing animal on the basis of size, quality, or rarity.

History: En. Sec. 1, Ch. 82, L. 1935.

26-810. (3744.2) Repealed—Chapter 159, Laws of 1955.

Repeal

This section (Sec. 2, Ch. 82, L. 1935), relating to a penalty for the violation of

section 26-809, was repealed by Sec. 2, Ch. 159, Laws 1955. For new general penalty provision, see sec. 26-324.

CHAPTER 9

OUTFITTER'S LICENSE—TAXIDERMIST'S LICENSE

- Section 26-901. Outfitter's license—qualifications—bonds—acting as guide.
 26-902. Offenses—penalty—revocation of license.
 26-903. Repealed.

- 26-904. Who deemed outfitter.
- 26-905. Record required to be kept by outfitter—contents—failure to comply—revocation of license.
- 26-906. Outfitter and employees of outfitter equally responsible with others for violations of law—must report violations.
- 26-907. Taxidermist's license—fee—penalty for violations.

26-901. (3745) Outfitter's license — qualifications — bonds — acting as guide. It shall be unlawful for any persons, company or corporation to engage in the business of outfitting without such person, persons, company or corporation having first obtained an outfitter's license from the state fish and game commission.

Each outfitter shall be a financially responsible citizen of the United States, a bona fide resident of the state of Montana, and possess proper equipment for the protection and convenience of his guests. Before issuing any outfitter's license, the director shall be satisfied that the applicant therefor shall possess the necessary ability, experience and equipment to fulfill the duties and responsibilities of an outfitter according to such standards that have been adopted by the commission. Any application for an outfitter's license made to the commission may be held for thirty (30) days for investigation. The director may refuse a license to any such applicant who does not qualify under the standards adopted by the commission, however, applicant may appeal to the commission within twenty (20) days of the date of the refusal and the commission shall hold a hearing on such appeal and the decision of the commission shall be final on said application. Before issuance of a license to any outfitter, the applicant therefor shall file a written application with the director of state fish and game department and said application shall be signed and sworn to by the applicant, stating in detail the name, address, and the property owned and used in said business by such applicant, whether he intends to outfit for hunting or fishing parties or both, his citizenship and such other facts as may be required to fully inform the director of the ability of the applicant to comply with this act, and the rules and regulations of the state fish and game commission.

An applicant for an outfitter's license shall file in the office of the state fish and game commission a corporate surety bond executed to the state of Montana in the penal sum of one thousand dollars (\$1,000.00) conditioned upon the faithful performance on the part of the outfitter, his agents or employees, and in compliance with the provisions of the laws of the state of Montana and the rules and regulations of the commission. The fee for an outfitter's license shall be ten dollars (\$10.00) and shall expire annually on January 1. This license shall authorize an outfitter to act as a guide for any person or party engaging him as an outfitter. The residential requirements herein provided for procuring an outfitter's license are hereby waived for the citizens of any state or states to the same extent that the home state of the applicant waives such residential requirements of the citizens of the state of Montana, providing that such waiver shall extend only to counties bordering on a state adjacent to the state of Montana. No outfitter is authorized to shoot or attempt to shoot or kill or take fish or game for those engaging him as an outfitter.

History: En. Sec. 66, Ch. 173, L. 1917; 17½, Ch. 77, L. 1923; amd. Sec. 1, Ch. 103, re-en. Sec. 3745, R. C. M. 1921; amd. Sec. L. 1941; amd. Sec. 1, Ch. 173, L. 1949; amd.

Sec. 1, Ch. 184, L. 1951; amd. Sec. 1, Ch. 223, L. 1955.

Collateral References

Licenses—11(1), 20, 29.
53 C.J.S. Licenses §§ 30, 33, 48.

26-902. (3746) Offenses—penalty—revocation of license. Any person who shall act as an outfitter without having an outfitter's license as the term "outfitter" is commonly understood, or any outfitter who shall willfully fail to report any violation committed by any person or persons employing him as an outfitter, or any employee who shall willfully fail to report any violation committed by any person or persons whom he is accompanying as a guide, or who shall be found guilty of a violation of the state fish and game laws, shall be guilty of a misdemeanor, and upon conviction thereof shall be punished as provided by law, and in addition, when any outfitter or agent or employee shall be found guilty of a violation of the fish and game laws, or rules and regulations of the commission, or who shall advertise himself to be an outfitter and shall willfully misrepresent his facilities, services, or equipment used, shall have his license revoked upon conviction of willful misrepresentation, and said license heretofore issued shall be revoked at the discretion of the director, with the approval of the commission, for a period of not less than two (2) years, nor more than five (5) years.

History: En. Sec. 67, Ch. 173, L. 1917; re-en. Sec. 3746, R. C. M. 1921; amd. Sec. 25, Ch. 224, L. 1947; amd. Sec. 2, Ch. 173, L. 1949; amd. Sec. 2, Ch. 184, L. 1951; amd. Sec. 5, Ch. 223, L. 1955.

Collateral References

Licenses—40.
53 C.J.S. Licenses § 66.

26-903. (3747) Repealed—Chapter 184, Laws of 1951.

Repeal

This section (Sec. 68, Ch. 173, L. 1917; amd. Sec. 3, Ch. 173, L. 1949), defining the

term "guide," was repealed by Sec. 6, Ch. 184, Laws 1951.

26-904. (3748) Who deemed outfitter. For the purpose of this act, the word "outfitter" shall mean any person or persons, company or corporation who shall engage in the business of outfitting for hunting or fishing parties, as the term is commonly understood, who shall for consideration provide any saddle or pack animal or animals or personal service for hunting or fishing parties, camping equipment, vehicles or other conveyance except boats for any person or persons to hunt, trap, capture, take or kill any game, or who shall for consideration furnish a boat or other floating craft and accompany any person or persons for the purpose of catching fish, or who shall aid or assist any person or persons in locating or pursuing any game animal.

History: En. Sec. 69, Ch. 173, L. 1917; re-en. Sec. 3748, R. C. M. 1921; amd. Sec. 4, Ch. 173, L. 1949; amd. Sec. 3, Ch. 184, L. 1951; amd. Sec. 2, Ch. 223, L. 1955.

26-905. (3749) Record required to be kept by outfitter—contents—failure to comply—revocation of license. Whenever an outfitter is engaged by any person or party, such outfitter shall keep a record showing the name, address, license number, dates employed by each person or party and the numbers and kind of game killed or amount of fish taken. Such information contained in the record shall be kept available for the period of one (1) year. Failure on the part of any outfitter to comply with the provisions

of this act shall be sufficient cause for revocation of an outfitter's license by the commission.

History: En. Sec. 70, Ch. 173, L. 1917; 5, Ch. 173, L. 1949; amd. Sec. 4, Ch. 184, re-en. Sec. 3749, R. C. M. 1921; amd. Sec. L. 1951; amd. Sec. 4, Ch. 223, L. 1955.

26-906. (3750) Outfitter and employees of outfitter equally responsible with others for violations of law—must report violations. Any person accompanying a hunting or fishing party as an outfitter or agent or employee of such outfitter shall be equally responsible with any person or party employing him as an outfitter for any violation of the law; any such outfitter or employee of such outfitter, who shall willfully fail to or refuse to report any violation of the law, shall be liable to the penalties as herein provided.

History: En. Sec. 71, Ch. 173, L. 1917; 6, Ch. 173, L. 1949; amd. Sec. 5, Ch. 184, L. re-en. Sec. 3750, R. C. M. 1921; amd. Sec. L. 1951; amd. Sec. 3, Ch. 223, L. 1955.

26-907. (3751) Taxidermist's license—fee—penalty for violations. Any person who shall engage in, or who is at the present time engaged in conducting any taxidermist business, as the term is generally understood, or any person who conducts a business for the purpose of mounting, preserving or preparing any of the dead bodies of any birds, or animals, or any part thereof, mentioned in the game laws of this state, must first obtain from the state fish and game warden [director] a taxidermist's license, and shall pay an annual license fee of fifteen dollars (\$15.00) therefor. Such person shall, on the first day of each month, make a written report to the state fish and game warden [director], of all the articles of game, the kind and number of each, by whom owned, and the residence of owner, received during the past month, also of all the articles of game shipped, and to whom and where shipped, during the last month; also the amount and kind of each on hand on the last day of the month, and by whom owned and owner's address. Any person violating the provisions hereof shall be deemed guilty of a misdemeanor, and upon conviction thereof shall be punished as provided by section 26-324. In all cases of conviction of violation of this act the license of the person convicted shall be revoked.

History: En. Sec. 72, Ch. 173, L. 1917; re-en. Sec. 3751, R. C. M. 1921; amd. Sec. 24, Ch. 77, L. 1923; amd. Sec. 26, Ch. 224, L. 1947.

fish and game wardens were designated as state fish and game wardens.

Cross-Reference

Carrying on business without license, penalty, sec. 94-1511.

Collateral References

Licenses 11(1), 25.
53 C.J.S. Licenses §§ 30, 35.

Compiler's Note

The bracketed words were inserted by the compiler since by sections 26-106.1 and 26-106.2 the state fish and game warden was designated as the state fish and game director and all deputy state

CHAPTER 10

DISPOSAL OF FINES—DUTIES OF COURTS—EXCEPTIONS FROM ACT

- Section 26-1001. Disposition of fines, bond and penalties—serving out fines and costs.
26-1002. Payment of cost bill to county wherein costs were incurred.
26-1003 to 26-1005. Repealed.

- 26-1006. Act not applicable to cases of extreme hunger.
 26-1007. Use of silencers or mufflers on firearms.
 26-1008. Permit for taking fish or game for scientific purposes.

26-1001. (3753) Disposition of fines, bond and penalties—serving out fines and costs. All fines, bonds, and penalties mentioned in any section of this act may be collected by civil action in the name of the state of Montana in any court of competent jurisdiction upon proper complaint being filed, and the amount of all fines and bonds collected under the provisions of this act shall be paid to the state game warden [director], and by him paid to the state treasurer and by him placed to the credit of the fund to be known as the fish and game fund. All such fines, bonds and costs shall be collected without stay of execution, and the defendant, or defendants, may by order of the court be confined in the county jail of the county until such fine and costs are served out at the rate of \$2.00 per day.

History: En. Sec. 74, Ch. 173, L. 1917;
 re-en. Sec. 3753, R. C. M. 1921; amd. Sec.
 25, Ch. 77, L. 1923.

Compiler's Note

The bracketed word was inserted by the compiler since by sections 26-106.1 and 26-106.2 the state fish and game warden was designated as the state fish and game

director and all deputy state fish and game wardens were designated as state fish and game wardens.

Collateral References

Fish↔14; Game↔8.
 36 C.J.S. Fish § 41; 38 C.J.S. Game § 16.
 24 Am. Jur. 392, Game and Game Laws,
 §§ 27 et seq.

26-1002. (3754) Payment of cost bill to county wherein costs were incurred. In all cases where there is a prosecution for the violation of fish and game laws, and costs have been incurred therein, a cost bill shall be prepared, including the cost of board of prisoners, and presented to the state board of examiners, and if by them allowed, the state treasurer shall thereupon pay the same out of the state game and fish fund to the county treasurer of the county wherein such costs were incurred.

History: En. Sec. 75, Ch. 173, L. 1917;
 re-en. Sec. 3754, R. C. M. 1921.

Collateral References

Costs↔294.
 20 C.J.S. Costs § 442.

26-1003 to 26-1005. (3755 to 3757) Repealed—Chapter 185, Laws of 1955.

Repeal

These sections (Secs. 76 to 78, Ch. 173, L. 1917), relating to the transportation of persons and property in furtherance of

fish and game interest, and the duties of grand juries, judges, prosecuting officials, and peace officers, were repealed by Sec. 1, Ch. 185, Laws 1955.

26-1006. (3758) Act not applicable to cases of extreme hunger. When it is shown that any violation of the provisions of this act was for the purpose of preventing great suffering by hunger of any person or persons, which could not otherwise have been avoided, the provisions of this act shall not apply to said case.

History: En. Sec. 79, Ch. 173, L. 1917;
 re-en. Sec. 3758, R. C. M. 1921.

References

State v. Rathbone, 110 M 225, 238, 100 P
 2d 86.

Collateral References

Fish↔13(1); Game↔7.
 36 C.J.S. Fish § 28; 38 C.J.S. Game § 10.

26-1007. (3759) Use of silencers or mufflers on firearms. It shall be unlawful for any person to take into the fields or forests, or to have in his possession while out for the purpose of hunting any wild animals or birds, any device or mechanism designed to silence or muffle, or minimize the report of any firearm, whether such device or mechanism be separated from or attached to any firearm.

History: En. Sec. 80, Ch. 173, L. 1917;
re-en. Sec. 3759, R. C. M. 1921.

Collateral References

Game 7.

38 C.J.S. Game § 10.

26-1008. (3760) Permit for taking fish or game for scientific purposes. It shall hereafter be lawful for the duly accredited representative of any school, college, university or other institution of learning, who may be investigating a scientific subject making the same necessary, to take, kill, capture and have in his possession for such purpose, any of the birds, fish or animals found in this state, and to take, kill and capture the same in any way, except by the explosion of dynamite; provided, that no more of any such birds, fish or animals shall be taken than are necessary for such investigation, and provided also that any person who shall desire to engage in such scientific investigation shall apply to the state game warden [director] for a license so to do. If the state game warden [director] is satisfied of the good faith of the applicant, he shall issue to him a permit, which shall place a time limit upon such investigation, and shall place a restriction upon the number of birds, fish or animals to be taken thereunder; and the person to whom such license is issued shall pay therefor the sum of five dollars (\$5.00), and shall have no right or authority to take, have or capture any other or greater number of birds, fish or animals than are mentioned in said license. Any person violating the provisions of this section shall be guilty of a misdemeanor and punishable as provided by section 26-324.

History: En. Sec. 81, Ch. 173, L. 1917;
re-en. Sec. 3760, R. C. M. 1921; amd. Sec.
97, Ch. 224, L. 1947.

was designated as the state fish and game director and all deputy state fish and game wardens were designated as state fish and game wardens.

Compiler's Note

The bracketed words were inserted by the compiler since by sections 26-106.1 and 26-106.2 the state fish and game warden

Collateral References

Fish 10(1); Game 5.

36 C.J.S. Fish § 36; 38 C.J.S. Game § 15.

CHAPTER 11

GAME PRESERVES, MIGRATORY BIRD RESERVATIONS

Section 26-1101. Creation of game preserves—boundaries—provisions thereof—penalties for violation of the provisions of this act.

26-1102. Sun river preserve.

26-1103. Gallatin preserve.

26-1104. Snowy mountain preserve.

26-1105. Repealed.

26-1106. Powder river game preserve.

26-1107. Flathead lake bird preserve.

26-1108. Consent to acquisition of certain land by United States for migratory bird reservation.

26-1108.1. Consent to acquisition of certain land by United States for transportation of a supplemental water supply for the Benton Lake Wildlife Refuge.

- 26-1109. Regulation of bird reserve by commission.
- 26-1110. Twin Buttes game preserve.
- 26-1111. Repealed.
- 26-1112. South Moccasin mountain game preserve.
- 26-1113. Repealed.
- 26-1114. Blackleaf game and bird preserve.
- 26-1115. Repealed.
- 26-1116. Teton Spring Creek bird preserve.
- 26-1117 to 26-1119. Repealed.
- 26-1120. Fish and game commission to procure hunting rights on adjoining federal wildlife preserve—certain areas to be open to resident licensees.
- 26-1121. Payment for lands authorized.
- 26-1122. Asset to act of congress known as Pittman-Robertson bill—reservations.
- 26-1123. Same—authority of fish and game commission.
- 26-1124. Cooperation with United States—power to acquire lands.
- 26-1125. Use of license fee.
- 26-1126. Consent to acquisition of certain land by United States for exhibition park for bison and other big game animals.
- 26-1127. Development by fish and wildlife service, United States department of the interior.

26-1101. (3761) Creation of game preserves—boundaries—provisions thereof—penalties for violation of the provisions of this act. There are hereby created, for the better protection of all the game animals and birds within the limits thereof, game preserves within the state of Montana, and more particularly hereinafter described as to their exterior limits by sections 26-1102 to 26-1104, 26-1106, 26-1107, 26-1110, 26-1112, 26-1114, 26-1116, 26-1118; except as hereinafter provided no person shall, within the limits of any game preserve within the state of Montana whether such preserve is created by the legislature or by the fish and game commission, hunt for, trap, capture, kill, or take, or cause to be hunted for, trapped or killed, any game animals or furbearing animals or birds of any kind whatever within the limits of said preserve, or carry or discharge any firearms, or create any unusual disturbance tending to or which may frighten or drive away any of the game animals or birds therein, or chase the same with dogs or hounds in said preserve; provided that the commission may declare that any preserve shall be open to the trapping of furbearing animals during the regular open season.

Permits to capture animals or birds for the purpose of propagation or for scientific purposes or to trap furbearing animals or to destroy mountain lions, wolves, foxes, coyotes, wildcats, lynx, or other predatory animals or birds or for carrying firearms, may be issued by the state game warden [director], upon the payment of such fee and in accordance with such regulations as may be established for said preserve by the state fish and game commission. Any person violating any of the provisions of this section or any other law of Montana relating to game preserves, shall be guilty of a misdemeanor and shall be punishable as provided by section 26-324.

History: En. Sec. 83, Ch. 173, L. 1917; re-en. Sec. 3761, R. C. M. 1921; amd. Sec. 28, Ch. 224, L. 1947; amd. Sec. 1, Ch. 31, L. 1949.

Compiler's Notes

The bracketed word was inserted by the compiler since by sections 26-106.1 and

26-106.2 the state fish and game warden was designated as the state fish and game director and all deputy state fish and game wardens were designated as state fish and game wardens.

Section 26-1118, referred to above, was repealed by Sec. 1, Ch. 171, Laws 1951.

Collateral References

Game 31½.

38 C.J.S. Game § 7.

24 Am. Jur. 373, Game and Game Laws, generally.

26-1102. (3763) Sun river preserve. Beginning at a point on the continental divide of the Rocky mountains, due south of the head or source of the south fork of the north fork of Sun river, in what will be section eight, township eighteen north of range ten west, Montana meridian, when surveyed; thence due north from the crest of the continental divide to the head of the south fork of the north fork of Sun river; thence northerly along and down the course of the south fork of the north fork of Sun river, as it winds and turns to its confluence with the north fork of the north fork of Sun river; thence northerly along the course of the north fork of the north fork of Sun river, as it winds and turns to its head or source; thence due north to the crest of the continental divide of the Rocky mountains; thence along the crest of the continental divide of the Rocky mountains southwesterly and southerly to the place of beginning intending hereby to include in said game-preserve all that territory lying between the said south fork of the north fork and the said north fork of the north fork of Sun river on the east, and the continental divide of the Rocky mountains on the west.

History: En. Sec. 1, Ch. 34, L. 1913;
re-en. Sec. 83, Ch. 173, L. 1917; re-en. Sec.
3763, R. C. M. 1921.

26-1103. (3764) Gallatin preserve. The boundaries of Gallatin Game Preserve are hereby established as follows: That portion of Gallatin county lying north of the Gallatin river, beginning at Daly Pass on the Yellowstone Park line, thence running in a northwesterly direction following the horse trail to the headwaters of the South Fork of Buffalo Horn creek, thence down the South Fork of Buffalo Horn creek to Buffalo Horn creek, thence down the main Buffalo Horn creek to the Forest Service fence, at this point the line shall leave the creek to follow the outer boundary of the developed camp sites on Buffalo Horn creek, thence following down Buffalo Horn creek to a plainly marked point east of the Walker cabin, thence southeast following a well-defined horse trail and ridge to Grouse mountain, thence in a southeasterly direction following the ridge to Tepee creek, thence crossing Tepee creek and continuing in an easterly direction upon a well-defined ridge to the Park line on Crown butte, thence following the Park line in a northerly direction to Daly Pass, the point of beginning.

That portion of Gallatin county lying south of the Gallatin river, beginning at a point where the north section line of section eighteen, township nine south of range five east, intersects the Gallatin river, thence due west along said section line and south section line of sections eleven and twelve, township nine south of range four east, to a point where said section lines intersect Sage creek, thence up the east bank of Sage creek to the confluence of Big Sage creek and Little Sage creek, thence south along the divide between the above mentioned creeks to Sage mountain, in an easterly direction along the divide to Bacon Rind and Tepee creeks to the west boundary of the Yellowstone National Park, thence north along the Yellow-

stone National Park boundary to the Gallatin river, thence in a north-westerly direction down the Gallatin river to the point of beginning.

History: En. Sec. 1, Ch. 87, L. 1911; L. 1919; re-en. Sec. 3764, R. C. M. 1921; amd. Sec. 1, Ch. 124, L. 1915; re-en. Sec. amd. Sec. 1, Ch. 80, L. 1925; amd. Sec. 29, 83, Ch. 173, L. 1917; amd. Sec. 1, Ch. 138, Ch. 224, L. 1947.

26-1104. (3765) Snowy Mountain preserve. There is hereby created, for the better protection of all of the game animals and birds within the limit thereof, game preserve within the state of Montana, and more particularly hereinafter described as to the exterior limits, and it is hereby declared to be unlawful to hunt for, trap, or kill, or cause to be hunted for, or killed, any of the animals herein mentioned, or to trap, capture, or molest any birds or animals of any kind whatever, within the limits of the game preserve hereby created, or to carry or discharge any firearms, or to create any unusual disturbance tending to frighten or drive away any game animals or birds, or to chase the same with dogs or hounds within said preserve; provided, however, that permits to capture animals or birds, for the purpose of propagation, or to destroy mountain lions, wolves, foxes, coyotes, wildcats, minks, or other predatory animals or birds, may be issued by the state game warden, upon the payment of such license fee and in accordance with such regulations as may be established for the administration of said preserve by the state fish and game commission. Said game preserve hereby created is more particularly described as follows:

Beginning at the northwest corner of section 36, township 13 north, range 17 east; thence south along the section line between sections 35 and 36 one mile; thence up the east fork of the Dry Pole canyon to the top of the ridge between Dry Pole and Rock creek; thence south along the top of this ridge to the summit of the mountains; thence east along the south rim of the summit to a point about one-half mile east of the Knife Blade ridge; thence north along the crest of the ridge between the east and west forks of Cottonwood canyon to where both of these forks unite; thence down the main canyon north to the forest boundary: approximately one-fourth ($\frac{1}{4}$) mile east of section corners 34, 35, 26 and 27, township 13 north, range 18 east; thence west along the forest boundary five (5) miles to the northwest corner of section 36, township 13 north, range 17 east, to the point of beginning.

History: En. Sec. 83, Ch. 173, L. 1917; re-en. Sec. 3765, R. C. M. 1921; amd. Sec. 1, Ch. 75, L. 1933.

26-1105. (3766) Repealed—Chapter 31, Laws of 1949.

Repeal

This section (Sec. 83, Ch. 173, L. 1917) prescribing the boundaries of Highwood

national forest, was repealed as Sec. 3766, Revised Codes 1935 by Sec. 2, Ch. 31, Laws 1949.

26-1106. (3767) Powder river game preserve. Beginning at the south-east corner of Powder river county at the Montana-Wyoming state line, thence north and along the north and south line between Powder river and Carter counties to a point where same dissects the East Fork of the Little Powder river, thence following down the center of said stream to the west bank of the Little Powder river, thence down the west bank thereof to its confluence with Powder river, thence up the east bank of said Powder river

to the junction of Cache Creek therewith, thence up the channel of said Cache Creek and the North Fork thereof to the divide or water-shed between Powder river and Tongue river, and thence south along said water-shed to the Montana-Wyoming state line, and thence due east and along said state line to the place of beginning.

History: En. Sec. 83, Ch. 173, L. 1917;
re-en. Sec. 3767, R. C. M. 1921; amd. Sec.
1, Ch. 3, L. 1949.

26-1107. (3768) Flathead lake bird preserve. That certain islands, two in number, including lot one of block one, containing two and fifty-seven hundredths acres; lot two of block one, containing two and sixty hundredths acres; lot one of block two, containing one and sixty-five hundredths acres, all being in the villa site of islands, situated in Flathead lake, in the county of Flathead, Montana, according to the official plat and survey of said land returned to the general land office by the surveyor general, be and the same are hereby made a perpetual place of refuge for birds of all kinds, the same to be called and known as "Flathead Lake Bird Preserve," which said lands shall be specially reserved for the breeding, propagating, and protection of all species of birds.

It shall be unlawful for any person to kill, shoot, capture, or destroy, or in any way injure any bird on said islands, or to interfere with their eggs or nests, or to shoot at, wound, or kill any bird within a distance of four hundred yards from the shore-line of said islands.

It shall be unlawful for any person to kill, shoot, capture, or destroy, or in any way injure any bird or animal on the university of Montana biological reserve located on the east shore of Flathead lake, or to interfere with their eggs or their young, or their nests, or to shoot at, wound, or kill any bird or any animal within four hundred yards of said university of Montana biological reserve, or to discharge any firearms on said reserve, or within four hundred yards thereof.

History: En. Sec. 83, Ch. 173, L. 1917;
re-en. Sec. 3768, R. C. M. 1921.

26-1108. Consent to acquisition of certain land by United States for migratory bird reservation. Consent of the state of Montana is given to the acquisition by the United States by purchase, gift, devise, or lease of such areas of land or water, or of land and water, in sections 31 and 32 in township 28 north of range 22 west; sections 4, 5, 8, 9, 16, 17, 18, 19 and 20 in township 27 north, of range 22 west; sections 13, 14, 15, 16, 21, 22, 23 and 24 in township 27 north of range 23 west, in Flathead county, Montana, as the United States may deem necessary for the establishment of a migratory bird reservation in accordance with the act of congress approved February 18, 1929, entitled: "An act to more effectively meet the obligations of the United States under the migratory bird treaty with Great Britain by lessening the dangers threatening migratory game birds from drainage and other causes by the acquisition of areas of land and of water to furnish in perpetuity reservations for the adequate protection of such birds; and authorizing appropriations for the establishment of such areas, their maintenance and improvement and for other purposes," reserving, however, to the state of Montana full and complete jurisdiction and authority over all

such areas not incompatible with the administration, maintenance, protection, and control thereof by the United States under the terms of said act of Congress.

History: En. Sec. 1, Ch. 156, L. 1941.

26-1108.1. Consent to acquisition of certain land by United States for transportation of a supplemental water supply for the Benton Lake Wildlife Refuge. Consent of the state of Montana is given to the acquisition by the United States by purchase, gift, devise or lease of a canal right-of-way approximately sixty-six (66) feet in width, together with an area not to exceed ten acres as a site for a pumping station works; or of land and water within township twenty-two north (22N), range one west (1W); township twenty-three north (23N), range two west (2W); township twenty-three north (23N), range one west (1W); township twenty-three north (23N), range one east (1E); township twenty-three north (23N), range two east (2E), Teton county; township twenty-two north (22N), range one east (1E), Cascade county; and township twenty-three north (23N), range three east (3E), Chouteau county, for the transportation of a supplemental water supply for the Benton Lake National Wildlife Refuge, Cascade county, established by Executive Order No. 5228, November 21, 1929, and as amended by Executive Order No. 2416, July 25, 1940, in accordance with the act of congress approved February 18, 1929, entitled: "An act to more effectively meet the obligations of the United States under the migratory bird treaty with Great Britain, by lessening the dangers threatening migratory game birds from drainage and other causes by the acquisition of areas of land and of water to furnish in perpetuity reservations for the adequate protection of such birds; and authorizing appropriations for the establishment of such areas, their maintenance and improvement and for other purposes," reserving, however, to the state of Montana full and complete jurisdiction and authority over all such areas not incompatible with the administration, maintenance, protection and control thereof by the United States under the terms of said act of congress.

History: En. Sec. 1, Ch. 227, L. 1953.

26-1109. Regulation of bird reserve by commission. Upon the acquisition or establishment of any such refuge in Flathead county, state of Montana, the fish and game commission of the state of Montana, acting under its authority to designate areas as resting, feeding and breeding grounds for migratory and other species of birds and wild animals, shall in its discretion establish such areas as a state refuge and adopt such regulations not inconsistent with the regulations of the secretary of the United States department of agriculture governing such areas as it may deem necessary for their protection, and may enter into cooperative agreements or arrangements with the said secretary for the enforcement of the afore-said act of congress and the regulations of the secretary of agriculture, and for the maintenance and administration of such refuge.

History: En. Sec. 2, Ch. 156, L. 1941.

26-1110. (3769) Twin Buttes game preserve. For the better protection of game animals and birds, the following area in the Lewis and Clark National Forest, in the Rocky mountains, state of Montana, is hereby set

aside and established as a state game preserve, to be known as the "Twin Buttes Game Preserve," to-wit:

Beginning at the junction of the Dearborn river with Falls creek in what will be township eighteen north of range seven west, Montana meridian, when surveyed, and running thence southerly along the course of said Falls creek to its junction with the tributary of said Falls creek, known as the "East Fork," thence due south to the crest of the Continental Divide, thence northwesterly along the Continental Divide to the head of Blacktail creek; thence northerly along said Blacktail creek to its junction with said Dearborn river, thence down the said Dearborn river to the place of beginning.

History: En. Sec. 83, Ch. 173, L. 1917;
re-en. Sec. 3769, R. C. M. 1921; amd. Sec.
30, Ch. 224, L. 1947.

26-1111. (3770) Repealed—Chapter 224, Laws of 1947.

26-1112. (3771) South Moccasin mountain game preserve. Beginning at the northeast corner of section thirty, township seventeen north, range eighteen east; running thence in a due westerly course a distance of five miles to the northwest corner of section twenty-eight, township seventeen north, range seventeen east; thence south two miles; thence west one-half mile to the northwest corner of section four, township sixteen north, range seventeen east; thence due south a distance of four miles to the southwest corner of section one, township sixteen north, range seventeen east; thence due east a distance of five miles to the southeast corner of section nineteen, township sixteen north, range eighteen east; thence due north a distance of four miles to the northeast corner of section six, township sixteen north, range eighteen east; thence due east one-half mile to the southeast corner of section thirty-one, township seventeen north, range eighteen east; thence due north two miles to the northeast corner of section thirty, township seventeen north, range eighteen east, Montana principal meridian, the place of beginning.

History: En. Sec. 1, Ch. 109, L. 1917;
re-en. Sec. 83, Ch. 173, L. 1917; re-en. Sec.
3771, R. C. M. 1921.

26-1113. (3772) Repealed—Chapter 224, Laws of 1947.

26-1114. (3773) Blackleaf game and bird preserve. Township twenty-six north of range eight west of the Montana meridian, in Montana, be, and the same is hereby created a game and bird preserve, to be known as the "Blackleaf Preserve," within the county of Teton, state of Montana.

History: En. Sec. 1, Ch. 114, L. 1921;
re-en. Sec. 3773, R. C. M. 1921; amd. Sec.
31, Ch. 224, L. 1947.

26-1115. (3774) Repealed—Chapter 224, Laws of 1947.

26-1116. (3776.3) Teton-Spring Creek bird preserve. For the better protection and propagation of birds, the following described area in Teton county, state of Montana, is hereby set aside and established as a state bird preserve, to be known as the Teton-Spring Creek bird preserve. All of sections two (2), three (3), four (4), nine (9), ten (10), eleven (11),

twelve (12), thirteen (13), fourteen (14), and fifteen (15), in township twenty-four (24), north, range five (5) west.

History: En. Sec. 1, Ch. 33, L. 1923.

26-1117. (3776.4) Repealed—Chapter 224, Laws of 1947.

26-1118. (3776.14) Repealed—Chapter 171, Laws of 1951.

Repeal

This section (Sec. 1, Ch. 91, L. 1933), relating to the establishment of the Cherry

Creek game preserve, was repealed by Sec. 1, Ch. 171, Laws 1951, effective February 28, 1951.

26-1119. (3776.15) Repealed—Chapter 31, Laws of 1949.

Repeal

This section (Sec. 2, Ch. 91, L. 1933), prohibiting hunting except in certain

cases in Cherry Creek game preserve, was repealed as Sec. 3776.15, Revised Codes 1935 by Sec. 2, Ch. 31, Laws 1949.

26-1120. Fish and game commission to procure hunting rights on adjoining federal wildlife preserve—certain areas to be open to resident licensees. The Montana fish and game commission shall negotiate for and enter into written agreements with owners, lessors, lessees, or others having control of areas, tracts or parcels of land adjoining or contiguous to any United States federal wildlife preserve including any wildlife refuge for migratory waterfowl in any section of Montana for the purpose of securing equal hunting and shooting rights for all resident holders of fish and game licenses in Montana on such adjoining and contiguous lands, and preventing such preserves from being surrounded by lands whereon such licensees may not enter. The commission shall, further, open or cause to be opened to public hunting and shooting of migratory waterfowl on any roads, lanes and trails not a part of the traveled portion of any federal aid highway system within a one (1) mile limit from the boundaries of any such preserve or refuge. The commission shall cause any such area, tract, road, lane or trail to be plainly posted with clear signs showing the boundaries of the areas, tracts, roads, lanes or trails open to shooting and hunting by licensees.

History: En. Sec. 1, Ch. 224, L. 1943.

26-1121. Payment for lands authorized. The commission is hereby authorized to negotiate the payment of a reasonable sum to land owners, lessors or lessees for the right of the commission to create a public shooting area upon their lands. The amount that may be paid for such purpose shall rest in the discretion of the fish and game commission.

History: En. Sec. 2, Ch. 224, L. 1943.

26-1122. Assent to act of congress known as Pittman-Robertson bill—reservations. The congress of the United States having passed an act which was approved on September 2, 1937, and which is known as 50 Federal Statutes 917 of the acts of congress, wherein it is, among other things, provided that "no money apportioned under this chapter to any state shall be expended therein until its legislature or other state agency authorized by the state constitution to make laws governing the conservation of wild life shall have assented to the provisions of this chapter and shall have passed laws for the conservation of wild life, which shall include a prohibition against the diversion of license fees paid by hunters for any other purpose than the administration of said state fish and game depart-

ment," and since the moneys referred to in the act of congress are collected in part from the hunters of this state and will not be returned to the state of Montana except the state of Montana do assent to the act, now, therefore, the state of Montana does assent to the provisions of said act of congress, which is commonly known as the Pittman-Robertson bill, but such assent is with the express reservations in this act enumerated. The state of Montana does not by the passage of this act, nor by the consent herein given, surrender to the congress of the United States or any department of the government of the United States any of those rights which are retained by the people of the state of Montana or the state of Montana and which are guaranteed to them by the ninth and tenth amendments to the constitution of the United States, nor shall this act in any manner or at all be construed or held to be the state of Montana's consent to amending the constitution of the United States in any manner or at all relative to its rights. Provided, however, that nothing herein shall be construed as giving consent to the purchase or acquisition of lands by the United States or by any of its departments or officers for establishing migratory bird sanctuaries under the migratory bird conservation act of the United States, or otherwise, and that the title to all lands acquired under the provisions of this act for wild life projects and projects constructed thereon shall be and remain in the state of Montana.

History: En. Sec. 1, Ch. 167, L. 1941.

26-1123. Same—authority of fish and game commission. The Montana fish and game commission is hereby authorized to perform such acts as may be necessary to the establishment and conduct of wildlife projects as defined and authorized by said act of congress, provided every project initiated under the provisions of this act shall be under the supervision of the Montana state fish and game commission, and no laws, rules or regulations shall be passed, made or established, governing the game or furbearing animals or the taking or capturing of the same in any such projects, except they be in conformity with the laws of the state of Montana or rules promulgated by the Montana fish and game commission and the title to all lands acquired or projects created from lands purchased or acquired by deed or gift shall vest in, be, and remain in the state of Montana and shall be operated and maintained by it in accordance with the laws of the state of Montana. The Montana fish and game commission shall have no power to accept benefits unless the projects created or established shall wholly and permanently belong to the state of Montana, except as provided in section 26-1124 of this code, and also provided, that nothing contained herein shall prevent the Montana fish and game commission from entering into cooperative agreements on federally-owned lands as provided for herein.

History: En. Sec. 2, Ch. 167, L. 1941;
amd. Sec. 1, Ch. 80, L. 1951.

26-1124. Cooperation with United States—power to acquire lands. The Montana state fish and game commission in the name of the state and with the approval of the governor shall have the power to enter into the cooperative agreements on federally-owned lands with the government of the United States or some department or bureau thereof, or with an individual or individuals, private corporations or partnership for the purpose of carry-

ing on any wildlife restoration project and established under the provisions of said Pittman-Robertson Act of the Congress of the United States, and shall have the power to acquire by purchase, either for cash or upon installments, or lease or by gift or devise, either individually or in conjunction with the government of the United States or some department or bureau thereof, such lands or other property or interests therein as may be necessary for the purpose of carrying on any wildlife restoration project created and established under the provisions of said Pittman-Robertson bill of the congress of the United States, and state of Montana does reserve to itself, acting through its legislature, the right to direct the Montana fish and game commission to abandon any wildlife restoration projects created and established as the state of Montana may in its judgment think proper, provided said commission shall have no power to exercise the right of eminent domain to condemn or acquire property under this act.

History: En. Sec. 3, Ch. 167, L. 1941;
amd. Sec. 2, Ch. 80, L. 1951.

26-1125. Use of license fee. In accordance with the other requirement of said act of congress, it shall be the law of this state, so long as this assent shall be unrepealed, that no license fees paid by hunters in the state of Montana shall be used or taken for any other purpose than the administration and use of the department of fish and game of the state of Montana.

History: En. Sec. 4, Ch. 167, L. 1941.

26-1126. Consent to acquisition of certain land by United States for exhibition park for bison and other big game animals. Consent of the state of Montana is given to the acquisition by the United States by purchase, gift, devise or lease of such areas of land or water, or of land and water in section thirty-one (31), township eighteen north (18N), range twenty west (20W), Lake county, Montana, and section thirty-six (36), township eighteen north (18N), range twenty-one west (21W), Sanders county, Montana, excepting the Northern Pacific Railway and state of Montana lands within said sections, as the United States may deem necessary for the establishment of an exhibition park for bison and other big game animals, reserving, however, to the state of Montana full and complete jurisdiction and authority over all such areas not incompatible with the administration, maintenance, protection and control thereof by the United States under the terms of applicable federal regulations.

History: En. Sec. 1, Ch. 209, L. 1953.

26-1127. Development by fish and wildlife service, United States department of the interior. Upon the acquisition or establishment of any such park in Lake county and Sanders county, state of Montana, the fish and wildlife service, United States department of the interior, agrees to develop, improve and maintain the park for the display of such native big game animals as are available on the national bison range.

History: En. Sec. 2, Ch. 209, L. 1953.

CHAPTER 12

PERMITS FOR BREEDING GAME BIRDS AND ANIMALS—OTHER REGULATIONS

Section 26-1201. Permit for breeding and propagating game birds and animals and furbearing animals.

26-1202 to 26-1204. Repealed.

26-1201. (3777) Permit for breeding and propagating game birds and animals and furbearing animals. Any person, or persons, firm, company or corporation before engaging in the business or occupation of propagating, owning and controlling game animals, game birds or furbearing animals of the state of Montana, shall first procure a game or fur farm permit from the state fish and game warden [director].

Such game or fur farm permit shall be issued to responsible applicants who own or lease the premises on which their operations are to be conducted, when such applicant has so fenced the place where such game or fur farm is located, with fencing material, approved by the state fish and game warden [director], so that no wild or public animal of like species can mix with those confined.

Foundation stock for a fur farm may be obtained from the state fish and game commission by a free permit authorizing game farm permit holders to capture a designated number of furbearing animals, with the exception of beaver or marten, for breeding stock, under such rules and regulations as the commission shall prescribe. Such furbearing animals captured under permit shall not be sold or pelted for the period of one (1) year after their capture and the skins or pelts of any furbearing animals accidentally killed during their capture or for the period of one (1) year thereafter shall be turned over to the state fish and game warden [director].

A charge shall be made for the capture of each beaver or marten by fur farm permit holders for foundation stock, under authorization of the state fish and game warden, as follows:

Beaver—fifteen dollars (\$15.00) each.

Marten—twenty-five dollars (\$25.00) each.

The skins, pelts or product of such game farm shall be subject to the same royalty tax and tagging as the skins or pelts of like wild animals. Each game farm or fur farm shall be open to complete inspection by the state fish and game warden [director] or his deputies [wardens] at any reasonable time, inclusive of the whole area thereof, all stock thereon, and all structures, pens, and other devices thereon. Game farm or fur farm permits issued under the provisions of this Act shall be valid during the time such game or fur farm is operated and conducted according to law, provided that on or before January 31 of each year a report shall be submitted by the licensee to the state fish and game warden [director], showing the numbers and species of game or furbearing animals on hand on January 1, preceding, and the number and kinds of animals pelted, bought or sold during the year.

Any person or persons, except as herein provided, who, at any time, in any part of the state of Montana, without the consent of the owner or caretaker of any enclosure within which furbearing animals are kept for breeding purposes, and on the fence of which enclosure are kept posted notices

forbidding trespassing on the premises where the said animals are kept, which notices must be plainly discernible at a distance of not less than twenty-five (25) yards therefrom, shall pass within the said fence or such enclosure or climb over, break or cut through the same for the purpose of entering the said enclosure, etc., or for any other purpose whatsoever, shall be guilty of a misdemeanor, and liable to the penalty hereinafter provided.

Any person or persons, firm, company or corporation engaging in the business or occupation of fox or mink farming whose original foundation stock is or was not captured from the wild in the state of Montana shall apply for and be issued free of charge a numbered certificate of identification for such fur farm, which certificate shall be nontransferable and valid for the life of the business; provided, no other provisions of this section shall be construed to or shall in any manner affect such person, or persons, firm, company or corporation engaging in the business or occupation of fox or mink farming whose original foundation stock is or was not captured from the wild in the state of Montana.

History: En. Sec. 84, Ch. 173, L. 1917; amd. Sec. 1, Ch. 200, L. 1919; re-en. Sec. 3777, R. C. M. 1921; amd. Sec. 31, Ch. 192, L. 1925; amd. Sec. 1, Ch. 73, L. 1933; amd. Sec. 1, Ch. 120, L. 1947.

and 26-106.2 the state fish and game warden was designated as the state fish and game director and all deputy state fish and game wardens were designated as state fish and game wardens.

Compiler's Note

The bracketed words were inserted by the compiler since by sections 26-106.1

Collateral References

Game 5.
38 C.J.S. Game § 15.

26-1202. (3778) Repealed—Chapter 224, Laws of 1947.

26-1203, 26-1204. (3778.1, 3778.2) Repealed—Chapter 185, Laws of 1955.

Repeal

These sections (Secs. 1, 2, Ch. 23, L. 1929; amd. Sec. 32, Ch. 224, L. 1947), re-

lating to hours of fishing in Georgetown lake, were repealed by Sec. 1, Ch. 185, Laws 1955.

CHAPTER 13

FUR DEALER'S LICENSE AND REGULATION

- Section 26-1301. Fur dealers defined.
26-1302. Records to be kept by fur dealers—inspection.
26-1303. Persons required to procure fur dealer's license.
26-1304. Classification and fees for licenses.
26-1305. Time for issuance and expiration of licenses.
26-1306. Penalty for violations.

26-1301. (3778.3) Fur dealers defined. Any person or persons, firm, company or corporation engaging in, carrying on, or conducting wholly or in part the business of buying or selling, trading or dealing within the state of Montana, in the skins or pelts of any animal or animals, designated by the laws of Montana as furbearing or predatory animals, shall be deemed a fur dealer within the meaning of this act.

If such fur dealer resides in or if his or its principal place of business is within the state of Montana, he or it shall be deemed a resident fur dealer. All other fur dealers shall be deemed nonresident fur dealers.

History: En. Sec. 1, Ch. 42, L. 1929.

References

State v. Salina, 116 M 478, 480, 154 P 2d 484.

Collateral References

Licenses⇒16(1).
53 C.J.S. Licenses § 30.

26-1302. (3778.4) Records to be kept by fur dealers—inspection. Every fur dealer shall keep a book in which shall be recorded separately on the date of each transaction the following facts:

(a) The number and kind of all skins or pelts purchased or sold by such fur dealer.

(b) The place where such skins or furs were killed or trapped and a separate record of all such skins or pelts as were killed or trapped outside the state of Montana.

(c) The trapping license number under which such furs or pelts were taken in cases where a trapper's license is required for the taking thereof.

(d) The names and addresses of the persons to whom such skins or pelts were sold or from whom they were purchased.

Said book shall be open at all reasonable times to the inspection of the state fish and game warden [director] or any of his deputies [wardens], or any United States game warden, and shall be preserved and accessible for one year after the expiration of any license granted to said fur dealer.

History: En. Sec. 2, Ch. 42, L. 1929.

Compiler's Note

The bracketed words were inserted by the compiler since by sections 26-106.1 and 26-106.2 the state fish and game warden was designated as the state fish

and game director and all deputy state fish and game wardens were designated as state fish and game wardens.

Collateral References

Licenses⇒25.
53 C.J.S. Licenses § 35.

26-1303. (3778.5) Persons required to procure fur dealer's license. All fur dealers as defined in this act shall before buying, selling or in any manner dealing in the skins or pelts of any furbearing or predatory animal within the state of Montana secure a fur dealer's license from the state fish and game warden [director], provided that no license shall be required for a hunter or trapper selling skins or pelts which he has lawfully taken, nor for any person not a fur dealer who purchases any such skins or pelts exclusively for his own use and not for sale.

History: En. Sec. 3, Ch. 42, L. 1929.

Compiler's Note

The bracketed word was inserted by the compiler since by sections 26-106.1 and 26-106.2 the state fish and game warden was designated as the state fish and game director and all deputy state fish and game wardens were designated as state fish and game wardens.

References

State v. Salina, 116 M 478, 480, 154 P 2d 484.

Collateral References

Licenses⇒16(1).
53 C.J.S. Licenses § 30.

26-1304. (3778.6) Classification and fees for licenses. The following classes of licenses shall be issued:

Resident fur dealer's license

Nonresident fur dealer's license

Fur dealer's agent's license

And the following fees charged therefor:

Resident fur dealer's license, ten (\$10.00) dollars

Nonresident fur dealer's license, fifty (\$50.00) dollars

Fur dealer's agent's license, ten (\$10.00) dollars

Any person who is employed by a resident or nonresident fur dealer as a traveling fur buyer shall be deemed a fur dealer's agent. A fur dealer's agent's license may be issued to any person who is employed by a licensed resident or licensed nonresident fur dealer as a fur buyer. Providing that it shall be the responsibility of each and every fur dealer and fur dealer's agent to have the proper license before buying or dealing in furs as defined by section 26-1301.

History: En. Sec. 4, Ch. 42, L. 1929; amd. Sec. 1, Ch. 69, L. 1941; amd. Sec. 1, Ch. 188, L. 1945.

Not Incumbent Upon Agent To Procure or Possess License

Where defendant had been convicted in justice court of buying furs for a fur dealer without a license, a misdemeanor, and again found guilty in district court on appeal, held, that the complaint did not

state a public offense, since, under this section as amended, it is not incumbent upon the agent to procure or possess a license for buying furs, but rather upon the fur dealer to procure a license for himself and his agent. *State v. Salina*, 116 M 478, 481, 154 P 2d 484.

Collateral References

Licenses⇒29.

53 C.J.S. Licenses § 48.

26-1305. (3778.7) Time for issuance and expiration of licenses. The license required by this act shall be issued annually and shall expire on April 30 of each year and no reduction in the fee charged for said license shall be made in any case where said license runs for less than one year.

History: En. Sec. 5, Ch. 42, L. 1929.

Collateral References

Licenses⇒22, 36.

53 C.J.S. Licenses §§ 39, 42.

26-1306. (3778.8) Penalty for violations. Any person, firm, company or corporation violating any of the provisions of sections 26-1301 to 26-1305 shall be guilty of a misdemeanor and upon conviction thereof, shall be punishable as provided by section 26-324.

History: En. Sec. 6, Ch. 42, L. 1929; amd. Sec. 33, Ch. 224, L. 1947.

Collateral References

Licenses⇒40.

53 C.J.S. Licenses § 66.

CHAPTER 14

FISH RESTORATION AND MANAGEMENT PROJECTS

Section 26-1401. Assent to act of congress known as "Dingell-Johnson" Bill.

26-1402. Powers of commission—title to land.

26-1403. Cooperative agreements on federally-owned land—acquisition of land—abandonment of projects.

26-1401. Assent to act of congress known as "Dingell-Johnson" Bill. The congress of the United States having passed an act which was approved on August 9, 1950, and which is known as Public Law 681-81st Congress, Chapter 658-Second Session, wherein it is, among other things, provided that "no money apportioned under this act to any state, except as herein-after provided, shall be expended therein until its legislature, or other state agency authorized by the state constitution to make laws governing the conservation of fish, shall have assented to the provisions of this act and shall have passed laws for the conservation of fish, which shall include pro-

hibition against the diversion of license fees paid by fishermen for any other purpose than the administration of said fish and game department, except that, until the final adjournment of the first regular session of the legislature held after passage of this act, the assent of the governor of the state shall be sufficient," and since the moneys referred to in the act of congress are collected in part from the fishermen of this state and will not be returned to the state of Montana except the state of Montana do assent to this act, now, therefore, the state of Montana do assent to the provisions of said act of congress, which is commonly known as the Dingell-Johnson Bill, but such assent is with the express reservations in this act enumerated. The state of Montana does not by the passage of this act nor by the consent herein given, surrender to the congress of the United States or any department of the government of the United States, any of those rights which are retained by the people of the state of Montana or the state of Montana and which are guaranteed to them by the ninth and tenth amendments to the constitution of the United States, nor shall this act in any manner or at all be construed or held to be the state of Montana's consent to amending the constitution of the United States in any manner or at all relative to its rights. The title to all lands acquired under the provisions of this act for fish restoration and management projects and projects constructed thereon shall be and remain in the state of Montana.

History: En. Sec. 1, Ch. 140, L. 1951.

section will be found in 64 Stat. at L. 430, United States Code, Tit. 16, secs. 777 to 777k.

Compiler's Note

The act of congress referred to in this

26-1402. Powers of commission—title to land. The Montana fish and game commission is hereby authorized to perform such acts as may be necessary to the establishment and conduct of fish restoration and management projects as defined and authorized by the said act of congress, provided every project initiated under the provisions of the act shall be under the supervision of the Montana state fish and game commission, and no laws, rules or regulations shall be passed, made, or established, relating to said fish restoration and management projects, except they be in conformity with the laws of the state of Montana or rules promulgated by the Montana fish and game commission and the title to all lands acquired or projects created from lands purchased or acquired by deed or gift shall vest in, be there remain in the state of Montana and shall be operated and maintained by it in accordance with the laws of the state of Montana. The Montana fish and game commission shall have no power to accept benefits unless the fish restoration and management projects created or established shall wholly and permanently belong to the state of Montana, except as hereinafter provided.

History: En. Sec. 2, Ch. 140, L. 1951.

26-1403. Cooperative agreements on federally-owned land—acquisition of land—abandonment of projects. The Montana fish and game commission in the name of the state and with the approval of the governor shall have the power to enter into cooperative agreements on federally-owned lands with the government of the United States or any department or bureau thereof, or with an individual or individuals, private corporations or

partnerships for the purpose of carrying on any fish restoration projects created and established under the provisions of this act and shall have the power to acquire by purchase either by cash or upon installments or lease or by gift or by devise or individually or in conjunction with the government of the United States or some department or bureau thereof, such lands or other property of interest therein as may be necessary for the purpose of carrying on any fish restoration and management projects created and established under the provisions of said Dingell-Johnson Bill of the congress of the United States, and the state of Montana does reserve to itself, acting through its legislature, the right to direct the Montana fish and game commission to abandon any fish restoration and management projects created and established as the state of Montana may in its judgment think proper, provided, said commission shall have no power to exercise the right of eminent domain to condemn or acquire property under this act.

History: En. Sec. 3, Ch. 140, L. 1951.

TITLE 27

FOOD AND DRUGS

- Chapter 1. Pure food and drug act, 27-101 to 27-120.
2. Regulation, management and sale of insecticides, fungicides, rodenticides, herbicides and other economic poisons, 27-201 to 27-212.
 3. State board of food distributors—regulation of food stores and food stuffs, 27-301 to 27-317.
 4. Supervision of milk industry—state milk control board, 27-401 to 27-425.
 5. Oleomargarine, 27-501 to 27-523.
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CHAPTER 1

PURE FOOD AND DRUG ACT

- Section 27-101. Adulterated or misbranded drugs and food—unlawful manufacture or sale.
- 27-102. What deemed adulterated.
- 27-103. Adulterated milk prohibited.
- 27-104. Butter, cheese and milk products.
- 27-105. Weights and measures—size of gallon, ounce and pound.
- 27-106. Tuberculin test of cattle in dairies.
- 27-107. Animals slaughtered under unsanitary conditions—unsanitary conditions defined.
- 27-108. Duty of peace and health officers to seize unwholesome food offered for sale.
- 27-109. How term “misbranded” shall be understood.
- 27-110. When dealer not to be prosecuted—guaranties—reference to federal standards.
- 27-111. License from state board of health for manufacturers and purveyors of food and drinks.
- 27-112. Duties and powers of state board of health—regulations—reference to federal standards—administrative personnel.
- 27-113. Samples of food and drugs for analysis.
- 27-114. Repealed.
- 27-115. Violations of act—penalties.
- 27-116. Prosecutions by county attorney—authentication of report of analyst—receipt in evidence—presumptive effect of report.
- 27-117. Limit to standards, rules and regulations promulgated by the state board of health—what foods or drugs deemed to be adulterated, misbranded or otherwise subject to the provisions of this act.
- 27-118. Sale of food containing saccharin prohibited.
- 27-119. Food defined.
- 27-120. Penalty for violation of act—disposal of fines.

27-101. (2578) Adulterated or misbranded drugs and food—unlawful manufacture or sale. It shall be unlawful for any person, persons, firm, or corporation, within this state, to manufacture for sale within this state, sell, offer for sale, or have within his or their possession, with the intent to sell within this state, any drugs or article of food which is adulterated or misbranded within the meaning of this act. The term “drug,” as used in this act, shall include all medicines or preparations recognized in the United States Pharmacopoeia or National Formulary for internal or external use, and any substance or mixture of substances intended to be used for the cure, mitigation, or prevention of disease of either man or animals. The

term "food," as used in this act, shall include all articles used as food, drink, confectionery, or condiment by man or animals, whether simple, mixed or compound.

History: En. Sec. 1, Ch. 130, L. 1911; re-en. Sec. 2578, R. C. M. 1921.

Nature of Action

A charge in a complaint that defendant sold and delivered to plaintiff's husband, for immediate use in his family, including plaintiff, adulterated meat containing "diseased, infected, putrid, decomposed, poisonous acid and animal matter," sufficiently charged defendant with a violation of the pure food act, and with a breach of duty constituting legal negligence. *Kelley v. John R. Daily Co.*, 56 M 63, 72, 181 P 326.

Id. Liability under the pure food act arises from a violation of the statute, and it is immaterial whether the foundation of an action based upon such violation is laid in negligence or warranty.

Id. The seller of food products is made insurer of their purity, and guilty knowledge on his part is not an ingredient of the offense prohibited; the obligation is personal, and cannot be avoided by showing that the impure food was purchased from a foreign concern and bore the stamp of approval by the government inspectors.

Id. A complaint alleging that, at the time of the sale of impure food by defendant to plaintiff, defendant was engaged in selling at retail, to the public generally, meat and meat products for human consumption, was sufficient to bring the case within the statute, and disclose the duty defendant owed to the public, including plaintiff, to see that its food products offered for sale were not adulterated within the meaning of such statute.

Id. It is not necessary for a plaintiff to refer to the pure food and drug act in order to recover damages for injuries arising from a violation of it. The courts take judicial notice of the general and public domestic statutes, and they need not be specially pleaded.

Police Regulation

The pure food and drug act is a general police regulation, which recognizes the fact that the sale of adulterated food-stuff is a constant menace to the health of the consuming public, and the duty enjoined by it upon the seller is such that a violation of it can affect the public health only through the individuals who are injuriously affected by partaking of such food. The duty imposed upon the vendor is one which extends to the public considered as a composite of individuals, and if a consumer sustains some special injury by reason of defendant's violation of the act he has a right of action against

the latter. *Kelley v. John R. Daily Co.*, 56 M 63, 71, 181 P 326.

Seller Made the Insurer of Purity

In an action for damages occasioned by consumption of deleterious and unwholesome food bought in a container or package, based upon the pure food and drug act, this section et seq., and section 74-321, under this section the applied warranty of the article sold extends to the public generally, while under section 74-321 it applies only to the immediate purchaser, held, that the seller is made the insurer of the purity of food products sold by him, and guilty knowledge of its impurity is not an ingredient of the offense charged. *Bolitho v. Safeway Stores, Inc.*, 109 M 213, 216, 95 P 2d 443.

Collateral References

Adulteration 4; Druggists 5; Food 15; Poisons 4.

2 C.J.S. Adulteration § 7; 28 C.J.S. Druggists § 6; 36 C.J.S. Food §§ 12, 22; 72 C.J.S. Poisons § 7.

22 Am. Jur., Food, p. 828, §§ 31 et seq.; p. 830, §§ 35 et seq.

Power to compel disclosure of ingredients or formula of patent or proprietary medicine. 1 ALR 1476.

Constitutionality of regulations as to milk. 18 ALR 235.

Validity of regulations as to the ingredients of nonalcoholic drinks. 41 ALR 930.

Preservative as adulterant within statute in relation to food. 50 ALR 76.

Constitutionality of provisions relative to oleomargarine. 53 ALR 474.

Constitutionality of requirement of disclosure by label of materials or ingredients of articles sold or offered for sale. 57 ALR 686.

Statutes or ordinances in relation to confectionery. 58 ALR 293.

Constitutionality of statutes relating to grading, packing, or branding of farm products. 73 ALR 1445.

What substances or commodities are within statutory term "proprietary or patent medicine." 76 ALR 1207.

Constitutionality of statutes requiring notice by label or otherwise of the fact that product is imported, or as to the place of production. 83 ALR 1409.

Statutory provisions relating to purity of food products as applicable to foreign substances which get into product as result of accident or negligence, and not by purpose or design. 98 ALR 1496.

Validity of statutes or ordinances relating to ice cream or other frozen milk products. 111 ALR 112.

Constitutionality of statutes, ordinances, or other regulations against adulteration of food products as applied to substances used for preservative purposes. 114 ALR 1214.

Construction and application of regulations as to milk. 122 ALR 1062.

Implied warranty of fitness by one serving food. 7 ALR 2d 1027.

27-102. (2579) What deemed adulterated. For the purposes of this act, an article shall be deemed as adulterated, in case of drugs:

First. When a drug is sold under or by a name recognized in the United States Pharmacopoeia or National Formulary, if it differs from the standard strength, quality, or purity, as determined by the test laid down in the United States Pharmacopoeia or National Formulary, official at the time of investigation; provided, that no drug shall be deemed to be adulterated under this provision if the standard or strength, quality or purity be plainly stated upon the bottle, box, or other container thereof, although the standard may differ from that determined by the test laid down in the United States Pharmacopoeia or National Formulary.

Second. If its strength or purity fall below the professed standard or quality under which it is sold.

In the case of foods:

First. In the case of confectionery, if it contains terra alba, barytes, tale, chrome yellow, or other mineral substance or poisonous color or flavor, or other ingredient deleterious or detrimental to health, or any vinous, malt, or spirituous liquor or compound or narcotic drug.

Second. If any substance or substances have been mixed with it so as to reduce, or lower, or injuriously affect its quality or strength.

Third. If any substance has been wholly or in part substituted for the article.

Fourth. If any valuable constituent has been wholly or in part abstracted from it.

Fifth. If it contains any proportion of a filthy, diseased, decomposed, putrid, or rotten animal or vegetable substance, whether manufactured or not, or in the case of milk, if it is the product of a diseased animal.

Sixth. If it is mixed, colored, coated, polished, powdered, or stained in a manner whereby damage or inferiority is concealed, or whereby it is made to appear better or of greater value than it really is.

Seventh. If it contains any added poisonous or other added deleterious ingredient.

Eighth. If it contains any added antiseptic or preservative substance, except common salt, saltpeter, cane-sugar, beet-sugar, vinegar, spices, or in smoked foods, the natural products of the smoking process, or other harmless preservatives whose use is authorized by the state board of health, and no preservative shall be used in greater quantity than the rules and regulations of the state board of health shall designate.

History: En. Sec. 2, Ch. 130, L. 1911; re-en. Sec. 2579, R. C. M. 1921.

Cross-References

Adulterated candies, sale, penalty, sec. 94-3503.

Adulteration forbidden, sec. 94-3502.

Adulteration of drugs, secs. 66-1524 to 66-1526.

Diseased animal carcasses, selling, penalty, sec. 94-35-173.

Diseased beef, sale forbidden, sec. 94-35-172.

Diseased cattle, selling meat from, penalty, sec. 94-35-194.

Poisoning, punishment, sec. 94-35-255.

Spoiled foods, selling, penalty, sec. 94-35-217.

Warranty, when sold for domestic use, sec. 74-321.

Animal Feed—Removal of Valuable Constituent

Where pellets which were used for sheep feed and which poisoned sheep were manufactured from screenings from the harvest of wheat by cooking and crushing the seeds, extracting the oils therefrom and pressing the residue into pellets, it was error to give an instruction under subd. 4 of this section, since the oil was removed

from the seeds but nothing was removed from the pellets which was the product sold. *Seaton Ranch Co. v. Montana Vegetable Oil & Feed Co.*, 123 M 396, 217 P 2d 549, 551.

References

Cited or applied as section 2, chapter 130, Laws of 1911, in *Kelley v. John R. Daily Co.*, 56 M 63, 71, 181 P 326; *Bolitho v. Safeway Stores, Inc.*, 109 M 213, 218, 95 P 2d 443.

27-103. (2580) Adulterated milk prohibited. No person, either by himself or by his servant or agent, or as the servant or agent of another person, shall sell, exchange, or deliver, expose or offer for sale or exchange adulterated milk, or milk to which water or any foreign substance has been added, milk produced from cows which have been fed on fermenting refuse from distilleries, breweries, or sugar factories or stable bedding or barnyard refuse, provided that fermenting pulp fed in conjunction with ground alfalfa and syrup be excepted, or from sick or diseased cows, or as pure milk from which the cream or a part thereof has been removed, or milk collected or kept or handled under conditions which are not cleanly or sanitary, and which do not conform to the rules and regulations of the state board of health made in conformity with the provisions of this act, or milk containing less than eight and one-half per cent of milk solids, exclusive of fat, and three and twenty-five hundredths per cent of milk fat, or milk which contains any added color preservative, or as cream, milk containing less than twenty per cent of milk fat.

History: En. Sec. 3, Ch. 130, L. 1911; re-en. Sec. 2580, R. C. M. 1921.

Cross-Reference

Sale of adulterated milk, prohibited, sec. 3-2448.

Collateral References

Adulteration \Rightarrow 4; Food \Rightarrow 28.
2 C.J.S. Adulteration §§ 5-10; 36 C.J.S. Food §§ 3, 10, 11, 18.
22 Am. Jur. 850, Food, §§ 59 et seq.

Constitutionality of regulations as to milk. 18 ALR 235.

Constitutionality of statutes, ordinances, or other regulations against adulteration of food products as applied to substances used for preservative purposes. 114 ALR 1214.

Construction and application of regulations as to milk. 122 ALR 1062.

Validity of municipal ordinance imposing requirements on outside producers of milk to be sold in city. 14 ALR 2d 103.

27-104. (2581) Butter, cheese and milk products. No butter, cheese, or other milk product shall be sold or offered for sale in this state unless made from milk, the sale of which is not prohibited under the provisions of the preceding section; provided, that cheese made from skim milk may be sold as "skim cheese" when branded in bold-faced letters not less than one inch in height, plainly stating that said article of food is made from skim milk; and provided, further, that renovated butter or butter made by any other process than that of churning milk, salable under the provisions of the preceding section, shall be branded so as to plainly indicate the method of making such butter and the contents thereof, and to the entire satisfaction of the state board of health.

History: En. Sec. 4, Ch. 130, L. 1911; re-en. Sec. 2581, R. C. M. 1921.

Cross-Reference

Oleomargarine, stamping required, sec. 94-35-145.

27-105. (2582) Weights and measures—size of gallon, ounce and pound.

In case of food sold by weight or measure, all measures shall be in gallons or fractions thereof, a gallon to contain two hundred and thirty-one cubic inches, and each fraction of a gallon to contain its corresponding fraction of two hundred and thirty-one cubic inches. Where weights or measures are stated in pounds and ounces, they shall be exclusive of the wrapper or other container, and each pound shall contain sixteen ounces, each ounce containing four hundred and thirty-seven and one-half grains. Any person, persons, firm, or corporation selling or offering for sale any article of food as a pound, or any multiple thereof, except by actual weight, the net weight of which is less than sixteen ounces, or the proper multiple thereof to represent the number of pounds sold or offered for sale, and any person, persons, firm, or corporation selling or offering for sale any quantity of food as a gallon, or any fraction thereof, which does not contain two hundred and thirty-one cubic inches net measure, or the fraction thereof represented by the fraction of a gallon offered for sale or sold, shall be guilty of a misdemeanor.

History: En. Sec. 5, Ch. 130, L. 1911; re-en. Sec. 2582, R. C. M. 1921.

Cross-References

Bottles and containers, measure regulations, secs. 90-140, 90-141.

Measurement of dairy products, secs. 3-2432, 3-2433.

Collateral References

Weights and Measures—5.

68 C.J. Weights and Measures § 2 et seq.

56 Am. Jur. 1015 et seq., Weights, Measures, and Labels.

Validity of statute or ordinance as to "containers." 5 ALR 1068.

Validity of statute or ordinance requiring commodities to be sold in a specified quantity or weight. 6 ALR 429.

Construction of statute or ordinance with respect to net weight or capacity of containers. 35 ALR 785.

Validity of statute or ordinance requiring or permitting the reweighing or remeasuring of commodities sold. 35 ALR 1056.

Validity of statute or ordinance regulating weighing of merchandise sold in load or bulk lots. 116 ALR 245.

Penal offense predicated upon violation of food law as affected by ignorance or mistake of fact, lack of criminal intent, or presence of good faith. 152 ALR 798.

27-106. (2583) Tuberculin test of cattle in dairies. The state veterinarian, either in person or by his deputies, shall tuberculin test all cattle used in and about all dairies in the state of Montana, at least once during each calendar year; and all persons, firms or corporations conducting a dairy in this state shall file with the secretary of the state board of health a certificate for each cow hereafter added to his dairy, which certificate shall be signed by a veterinarian approved by the state board of health, and shall state that such cow has been tuberculin tested by him and found to be free from tuberculosis, and such certificate shall contain a description of such cow, which description shall be sufficiently complete to identify the cow; and any person, firm, or corporation using any cow in his dairy, or keeping any cow on his dairy premises, which has not been tuberculin tested and found free from tuberculosis, shall be guilty of a misdemeanor, and shall be deemed guilty of selling milk from diseased cows. For the purpose of this act, any person shall be deemed as conducting a dairy who offers for sale any milk or cream, or who sells milk or cream to any butter factory, creamery, or other place where milk or milk products are manufactured or sold.

History: En. Sec. 6, Ch. 130, L. 1911;
re-en. Sec. 2583, R. C. M. 1921.

Cross-References

Keeping cows in unhealthy place, penalty, sec. 94-1206.

Sale from diseased cows, penalty, sec. 94-35-194.

Collateral References

Animals↔29 et seq.

3 C.J.S. Animals § 51 et seq.

Constitutionality of statute for control of diseases of livestock. 65 ALR 525, 550.

27-107. (2584) Animals slaughtered under unsanitary conditions—unsanitary conditions defined. It shall be unlawful for any person, persons, firm, or corporation to sell within this state, or to have within his or their possession with the intent to sell within this state for human food, the carcass or parts of the carcass of any animal which has been slaughtered, prepared, handled, or kept under unsanitary conditions; and unsanitary conditions shall be deemed to exist whenever and wherever any one or more of the following conditions are found to appear, to-wit: If the slaughter-house is dilapidated or in a state of decay; if the floor or side walls are soaked with decaying blood or other animal matter; if efficient fly screens are not provided; if the drainage of the slaughter-house yard is not efficient; if maggots or filthy pools or hog wallows exist in the slaughter-house yard or under the slaughter-house floor; if the water supply used in connection with the cleaning and preparing of the meat is not pure and uncontaminated; if the hogs are kept in the slaughter-house yard, or fed therein on animal offal, or if the odors of putrefaction plainly exists in or about the slaughter-house; if carcasses or parts of carcasses are transported from place to place when not covered with clean white cloths, or if kept in unclean or bad smelling refrigerator or refrigerators, or if kept in unclean or foul smelling storerooms. It shall be unlawful for any person, persons, firm, or corporation to have in his or their possession, with intent to sell, the carcass of any animal or fowl which has died from any cause other than being slaughtered in a sanitary manner, or the carcass or part of the carcass of any animal that shows evidence of any disease, or that came from a sick or diseased animal, or the carcass or part of the carcass of any calf that was killed before it had attained the age of four weeks.

History: En. Sec. 7, Ch. 130, L. 1911;
re-en. Sec. 2584, R. C. M. 1921.

Cross-Reference

Unsanitarily slaughtered or handled animal carcasses not to be sold, sec. 46-216.

Collateral References

Animals↔19; Health↔29.

3 C.J.S. Animals § 44; 39 C.J.S. Health § 21.

27-108. (2586) Duty of peace and health officers to seize unwholesome food offered for sale. It shall be the duty of all peace or health officers to seize any animal carcass or parts of carcasses, or any domestic or wild fowl, eggs, game, fish, or other food product found to be unwholesome, and which are intended for sale or offered for sale for human food, or which have been slaughtered or prepared, handled, or kept under unsanitary conditions as herein defined, or as the rules and regulations of the state board of health may designate, and shall deliver the same forthwith to and before the nearest police judge or justice of the peace, together with all information obtained; and said police judge or said justice of the peace shall issue warrants of arrest for all persons believed to have violated any provision of this act, and said cause shall be tried at an early date thereafter. The

said police judge or said justice of the peace shall immediately drench the unwholesome food brought before him with kerosene, and require the owner thereof to immediately dispose of the same in a sanitary manner, or he may, in his discretion, order the unwholesome food rendered into grease and tankage.

History: En. Sec. 7, Ch. 130, L. 1911; 36 C.J.S. Food § 50.
re-en. Sec. 2586, R. C. M. 1921. 22 Am. Jur. 866, Food, §§ 78 et seq.

Collateral References

Food 24.

27-109. (2587) How term "misbranded" shall be understood. The term "misbranded," as used herein, shall apply to all drugs, or articles of food, or articles which enter into the composition of food or drugs, the package or label of which shall bear any statement, design, or device regarding such article, or the ingredients or substances contained therein, which shall be false or misleading in any particular, and to any food, or drug product which is falsely branded as to the state, territory, or country in which it is manufactured or produced, unless the word "process" or "type," in plain, legible and obvious English print, type, or script immediately follows the state, territory, country, locality, or brand designated. That for the purpose of this act, an article shall be deemed to be misbranded; in the case of drugs:

First. If it be an imitation or offered for sale under the name of another article.

Second. If the contents of the package as originally put up shall have been removed, in whole or in part, and other contents differing in quality or quantity from the original contents shall have been placed in such package, or if the package fail to bear a statement on the label of the quantity or proportion of any alcohol, morphine, opium, cocaine, heroin, alpha or beta eucaine, chloroform, cannabis indica, chloral hydrate, acetanilide, phenacetine, antipyrine, or any derivative of any preparation of any such substance contained therein; provided, that said requirements as to statement of contents shall not be operative until on and after January 1, 1912; and provided, further, that the requirements of this section shall not apply to medical prescriptions written by physicians and surgeons, dentists, or veterinary surgeons, nor to extemporaneous preparations dispensed by druggists, nor shall the provisions of this section be construed as prohibiting legally qualified physicians and surgeons, dentists, and veterinary surgeons from administering drugs to patients under their care.

In the case of foods:

First. If it is an imitation of or offered for sale under the distinctive name of another article.

Second. If it be labeled or branded so as to deceive or mislead the purchaser, or purport to be a foreign article when not so, or if the contents of the package as originally put up shall have been removed, in whole or in part, and other contents shall have been placed in such package, or if it fail to bear a statement on the label of the quantity or proportion of any morphine, opium, cocaine, heroin, alpha or beta eucaine, chloroform, cannabis indica, chloral hydrate, acetanilide, phenacetine, or antipyrine, or any

derivative of any preparation of any such substance or substances contained therein; provided, that such statement shall not be required as to articles of food in the hands of wholesalers or retailers on or prior to January 1, 1912.

Third. If in the package form, and the contents are stated in terms of weight or measure, they are not plainly and correctly stated on the outside of the package.

Fourth. If the package containing it, or its label, shall bear any statement, design, or device regarding the ingredients or the substances contained therein, which statement, design, or device shall be false or misleading in any particular; provided, that an article of food which does not contain any added poisonous or deleterious ingredient shall not be deemed to be adulterated or misbranded in the following cases:

First. In the case of mixtures or compounds which may be now or from time to time hereafter become known as articles of food, under their own distinctive names and heretofore known to the consumer, and not an imitation of or offered for sale under the distinctive name or brand of another article, if the name be accompanied on the same label or brand with the statement of the place where said article has been manufactured or produced; provided, further, for the purpose of this act, a drug or food shall not be deemed misbranded, marked, labeled, or tagged with the distinctive trade or commercial name heretofore known to the consumer.

Second. In the case of articles labeled, branded, or tagged so as to plainly indicate that they are compounds, imitations, or blends, and the word "compound," "imitation," or "blend," as the case may be, is plainly printed on the package in which it is offered for sale; provided, that the term blend as used herein shall be construed to mean a mixture of like substances, not excluding harmless coloring or flavoring ingredients used for the purpose of coloring or flavoring; and provided, further, that in cases of spirituous liquors the term like substances shall be construed to mean pure distillates of grain, or pure distillates of fruit and grain; and provided, further, that nothing in this act shall be construed as compelling or requiring proprietors or manufacturers of proprietary foods, which contain no unwholesome added ingredients to disclose their trade formulas except so far as the provisions of this act may require to secure freedom from adulteration or misbranding.

History: En. Sec. 8, Ch. 130, L. 1911;
re-en. Sec. 2587, R. C. M. 1921.

2 C.J.S. Adulteration § 6; 28 C.J.S. Drug-
gists § 6; 36 C.J.S. Food § 12; 72 C.J.S.
Poisons § 8.

Collateral References

Adulteration 4; Druggist 5; Food
15; Poisons 4.

27-110. (2588) When dealer not to be prosecuted—guaranties—reference to federal standards. No dealer shall be prosecuted under the provisions of this act for selling or offering for sale any article of food or drugs, as defined herein, when the same is found to be adulterated or misbranded within the meaning of this act, in the original, unbroken package in which it was received by said dealer, when he can establish (a) a guaranty, signed by the wholesaler, jobber, or agent, or other party residing in the United States from whom he purchased such article, or (b) if a proper

printed guaranty of the manufacturer with his address be upon the package or container, to the effect that the same is not adulterated or misbranded in the original unbroken package in which the said article was received by said dealer, within the meaning of this act, designating it, or within the meaning of the Federal Food, Drug and Cosmetic Act of June 25, 1938, 52 United States Statutes at Large, 1040 through 1059; Title 21, United States Code, sections 301—392 (from time-to-time revised, amended and supplemented). Said guaranties, in order to afford protection thereunder for any dealer, must contain the name and address of the party or parties making the sale of such article to such dealer, or of the manufacturer thereof, as herein specified, and in such case said party shall be amenable to prosecution, fines and other penalties, which would attach in due course to the dealer under the provisions of this act.

History: En. Sec. 9, Ch. 130, L. 1911; re-en. Sec. 2588, R. C. M. 1921; amd. Sec. 1, Ch. 119, L. 1955.

Not a Defense for Dealer in Action for Damages

This section is not open to the construction that the presence of a guaranty executed by the wholesaler, jobber or manu-

facturer as to the purity of an article of food sold in the original, unbroken package and found adulterated, is a defense to an action against the dealer for damages resulting from illness caused by eating the food, and does not relieve him from civil liability under section 74-321. *Bolitho v. Safeway Stores, Inc.*, 109 M 213, 219, 95 P 2d 443.

27-111. (2589) License from state board of health for manufacturers and purveyors of food and drinks. (1) It shall be unlawful for any person, persons, firm, or corporation to conduct any restaurant, cafe, lunch counter, dining-car, manufacturing bakery, manufacturing confectionery, meat market, cannery, soda fountain, ice cream parlor, soft drink establishment or bottling works, without having a license issued by the state board of health of Montana; provided, that no license shall be required for a dining-room, cafe or lunch counter that is operated in connection with and under the same management as a hotel that holds a license from the state board of health, or that is subject to the payment of a license fee under the provisions of chapter 36, session laws of 1919 (34-201 to 34-213), an annual fee of two dollars shall be required for each license. Licenses shall be made to expire on the last day of December of the current year in which they are issued. Applications for licenses shall be made on blanks supplied by the state board of health. No license shall be issued to any place of business that is conducted in a grossly unsanitary manner.

(2) If as a result of inspection by an authorized representative of the state board of health, it is found that any licensed place of business is not conducted within a reasonable degree of compliance with the rules and regulations of the state board of health, the license may be canceled by the secretary of the state board of health; provided, that any licensee whose license is so canceled shall be entitled to a hearing before the state board of health to show cause if any, why his license should not be canceled. In such case licensee must make written request to the secretary of the state board of health for a hearing within five days after notice has been received that his license has been canceled.

(3) Fees collected by the state board of health for licenses issued shall be transmitted to the state treasurer and placed to the credit of the general fund as provided for by law.

History: En. Sec. 10, Ch. 130, L. 1911; amd. Sec. 1, Ch. 175, L. 1921; re-en. Sec. 2589, R. C. M. 1921.

Cross-References

Carrying on business without license, penalty, sec. 94-1511.

Cities may license soft drink parlors, secs. 11-918, 11-987.

Failure to Procure License as a Defense

Offered evidence to show that plaintiff did not have the license required by this section authorizing him to conduct his restaurant business, at the time he was evicted by his landlord before expiration

of the lease, was immaterial, since the fact alone would not tend to prove that he could not have procured one upon placing the premises in a sanitary condition. *Quong et al. v. McEvoy et al.*, 70 M 99, 105, 224 P 266.

References

State v. Hennessy Co., 71 M 301, 307, 230 P 64; *State v. Yale Oil Corp. of South Dakota*, 88 M 506, 510, 295 P 255.

Collateral References

Food 3; Health 31.

36 C.J.S. Food § 12; 39 C.J.S. Health §§ 25, 29.

27-112. (2591) Duties and powers of state board of health—regulations—reference to federal standards—administrative personnel. (1) The state board of health of the state of Montana is hereby charged with the duty of enforcing the "Pure Food and Drug Act" of the state of Montana, as codified and found in and under Title 27, "Food and Drugs," Chapter 1, "Pure Food and Drug Act," sections 27-101 through 27-120, inclusive, Revised Codes of Montana, 1947, and as said act may be hereafter amended, revised and supplemented, and with the duty of enforcing all other codes, statutes and session laws, acts and parts of acts, wherein or whereby the state board of health is assigned, or in and by which there is delegated to it, any powers and functions, or by which it is charged with any duties, in the field of food and drug regulation within the state of Montana. The board shall make all necessary investigations and inspections in reference to all food and drugs, and for this purpose the state, county, and local health officers shall be food and drug inspectors for their respective districts; each local county health officer shall make regular inspections as the rules and regulations of the state board of health may direct, and such special inspections as said board of health may from time-to-time order made, and he shall make such reports relative to conditions existing within his district at such times and in such manner as the state board of health may direct.

(2) Should any health officer fail, neglect, or refuse to make any such regular or special inspection, or fail to make any report in the manner and at the time designated by the state board of health, or should such officer make a false report of any condition that may exist within his district, the state board of health shall notify the mayor of the city or town, in the case of a local health officer, or the chairman of the board of county commissioners, in the case of a county health officer, of such negligence on the part of such health officer, and said state board of health may, in its discretion, order the removal from office of such delinquent health officer, and when such an order is issued by the state board of health, the mayor of the city or town, in the case of a local health officer, or the board of county commissioners, in the case of a county health officer, shall immediately declare the office of health officer vacant and shall appoint another competent and legally qualified physician and surgeon to fill the office.

The state board of health shall adopt all needful rules and regulations for the thorough and uniform enforcement of the provisions of this act throughout the state, and shall adopt and promulgate rules and regulations

relative to the sanitary management of all places designated in section 27-111 of this code, and it shall adopt rules regulating the minimum standards for foods and drugs, defining specific adulterations and declaring proper methods of collecting and examining all drugs and articles of food, and the violation of any such rule or regulation shall be punished, on conviction, as set forth in section 27-115 of this code; provided, that such rules and regulations made and promulgated by the state board of health shall be limited to and operative upon the foods, drugs and other articles and substances, and the persons, firms and corporations, within the purview of said codes, statutes and session laws of the state of Montana, and provided further, that such rules and regulations of the board shall, in the interests of uniformity, and to prevent diversity and confusion, at all times conform to the rules and regulations of, and promulgated under the Federal Food, Drug and Cosmetic Act of June 25, 1938, (52 United States Statutes at Large, 1040 through 1059; Title 21, United States Code, sections 301—392 as from time-to-time revised, amended and supplemented). The board shall, in adopting and promulgating such rules and regulations for application in the state of Montana, clearly identify the specific standards, rules and regulations of or under said federal act which are hereby made applicable to the subjects and persons regulated under the Montana "Pure Food and Drug Act," and the laws of Montana, and shall promulgate and publish the same in the full text of such standards and regulations, so identified, as its own rules and regulations; and the board shall freely disseminate the same for the information of the public, and of all persons concerned, but the board shall not adopt or promulgate any federal standards, rules or regulations with reference to subjects, foods, drugs, articles, or commodities or with reference to persons, firms and corporations which are excluded from, or not within the purview of the regulatory legislation of this state.

(3) It shall be the duty of the state board of health, at the instance of any person, firm, or corporation, or on its own volition, to examine, analyze, and determine the purity, branding, and labeling of any food or drug placed upon the market or offered for sale in the state of Montana, and if found legal, it shall certify to the individual, firm, or corporation manufacturing, selling, or offering for sale such food or drug, that such food or drug is legal.

No prosecution shall follow until such time as the individual, firm or corporation has been notified by the state board of health wherein any food or drug fails to meet the requirements of the rules and regulations of the state board of health, and such further time to remedy the failure as the state board of health may grant, has expired without compliance.

(4) All state, local, and county health officers are hereby authorized to enter any premises where any article of food or drug is sold, offered for sale, manufactured, cooked, stored, or treated in any way, for the purpose of inspecting such premises and the manner in which such food or drug is handled.

(5) For the purpose of administering and enforcing this act, the board shall employ and appoint such qualified professional, administrative and enforcement personnel, including a qualified chemist, the technical qualifications of which personnel the board shall determine, as may be per-

mitted, from time-to-time, by appropriations of the legislative assembly for such purposes. All of the persons employed by the board as professional, administrative and enforcement personnel shall serve at all times under and in compliance with the orders and directives of the board. All chemical or other analyses required in the enforcement of the food and drug laws shall be made in the laboratory of the state board of health.

History: En. Sec. 11, Ch. 130, L. 1919;
re-en. Sec. 2591, R. C. M. 1921; amd. Sec.
2, Ch. 119, L. 1955.

27-113. (2592) Samples of food and drugs for analysis. Every person offering or exposing for sale or delivering to a purchaser any drug or article of food included in the provisions of this act, shall furnish to any inspector or other officer or agent appointed hereunder, who shall apply to him for the purpose and shall tender to him the value of the same, a sample sufficient for analysis of any drug or article of food which is in his possession. Whoever hinders, obstructs, or in any way interferes with an inspector, or other officer or agent appointed hereunder, in the performance of his duty, shall, upon conviction, be fined in any sum not less than ten dollars nor more than one hundred dollars.

History: En. Sec. 12, Ch. 130, L. 1919;
re-en. Sec. 2592, R. C. M. 1921.

Collateral References

22 Am. Jur. 821, Food, §§ 20 et seq.

27-114. (2593) Repealed—Chapter 119, Laws of 1955.

Repeal

This section (Sec. 13, Ch. 130, L. 1911;
amd. Sec. 1, Ch. 73, L. 1929), relating

to the director of the food and drugs division, was repealed by Sec. 5, Ch. 119, Laws 1955, effective March 2, 1955.

27-115. (2594) Violations of act—penalties. Except as elsewhere provided in this act, any person, persons, firm, or corporation violating any of the provisions of this act shall, upon conviction of the first offense, be punished by a fine of not less than twenty-five dollars nor more than seventy-five dollars; for the second offense, by a fine of not less than fifty dollars nor more than two hundred dollars; and for the third and subsequent offenses, by a fine of not less than one hundred dollars and imprisonment in the county jail for not less than thirty nor more than ninety days, and all fines collected for violations of this act shall be paid to the county treasurer of the proper county, who shall remit the same to the state treasurer of the state of Montana, and said moneys shall be placed to the credit of the state board of health maintenance fund.

History: En. Sec. 15, Ch. 130, L. 1911;
re-en. Sec. 2594, R. C. M. 1921.

2 C.J.S. Adulteration §§ 19, 20; 28 C.J.S. Druggists § 13; 36 C.J.S. Food § 31; 39 C.J.S. Health § 30; 72 C.J.S. Poisons § 7.

Collateral References

Adulteration☞7; Druggists☞11; Food
☞16; Health☞38; Poisons☞4.

27-116. (2595) Prosecutions by county attorney—authentication of report of analyst—receipt in evidence—presumptive effect of report. Whenever the state board of health shall furnish evidence to the county attorney of any county in this state, such county attorney shall prosecute any person, persons, firm, or corporation violating any provisions of this act, or any rules or regulation made by the state board of health in conformity with the provisions of this act. The report of the chemist, other analyst, or other

person, acting for the board must be identified by the signature of such person, and such signature must be certified to be such by the signature of the executive officer or secretary of the board, and under the seal of the board. Any such report so signed, certified and sealed, stating that any drug or food examined is found to be impure or below the standard required by the provisions of this act, or the rules and regulations of the state board of health, shall be taken and received as presumptive evidence of the impurity of such drug or article of food.

History: En. Sec. 16, Ch. 130, L. 1911; re-en. Sec. 2595, R. C. M. 1921; amd. Sec. 2, Ch. 73, L. 1929; amd. Sec. 3, Ch. 119, L. 1955.

Collateral References

District and Prosecuting Attorneys 7.
27 C.J.S. District and Prosecuting Attorneys § 12.

27-117. (2596) Limit to standards, rules and regulations promulgated by the state board of health—what foods or drugs deemed to be adulterated, misbranded or otherwise subject to the provisions of this act. No standards, rules or regulations shall be promulgated by the state board of health under the provisions of this act, which do not conform (a) to the provisions of the Food and Drug Act of the state of Montana, and (b) to the standards, rules and regulations promulgated, or hereafter to be promulgated, pursuant to the authority of the Federal Food, Drug and Cosmetic Act of June 25, 1938, (52 United States Statutes at Large, 1040 through 1059; Title 21, United States Code, sections 301—392 as from time-to-time revised, amended, and supplemented) and as identified, adopted and promulgated by the board; and no article of foods or drugs shall be deemed to be adulterated, misbranded, or otherwise subject to the provisions of this act, when such article of food or drugs conforms to such act or to the standards, rules and regulations promulgated under authority of the Federal Food, Drug and Cosmetic Act of June 30, 1938, as from time-to-time revised, amended and supplemented.

History: En. Sec. 17, Ch. 130, L. 1911; re-en. Sec. 2596, R. C. M. 1921; amd. Sec. 4, Ch. 119, L. 1955.

What Constitutes "Pure" Conclusion of Pleader

An allegation in the answer of a dealer in foodstuffs in unbroken packages, in an action for damages resultant from consumption of an unwholesome and deleterious article, that the food sold conformed to the rules and regulations of congress under the national pure food acts, and therefore, under this section, could not be deemed adulterated or objectionable,

held, a conclusion of the pleader, in the absence of a statement of facts from which it could be determined that the government would permit the sale of the article in the condition it was, when sold. *Bolitho v. Safeway Stores, Inc.*, 109 M 213, 219, 95 P 2d 443.

Collateral References

Adulteration 1; Druggists 1; Food 1; Health 20; Poisons 2.
2 C.J.S. Adulteration § 2; 28 C.J.S. Druggists § 2; 36 C.J.S. Food § 8; 39 C.J.S. Health § 2; 72 C.J.S. Poisons § 2.

27-118. (2597) Sale of food containing saccharin prohibited. It shall be unlawful for any person, persons, firm or corporation within the state of Montana knowingly, to manufacture, sell, offer for sale, or have within his or their possession with the intent to sell, any beverage or article of food which contains saccharin.

History: En. Sec. 1, Ch. 256, L. 1921; re-en. Sec. 2597, R. C. M. 1921.

Collateral References

Adulteration 4; Food 5.
2 C.J.S. Adulteration §§ 5-10; 36 C.J.S. Food § 15.

27-119. (2598) Food defined. The term "food," as used in this act shall include all articles used for food, drink, confectionery or condiment by man or animals, whether simple, mixed or compound, and all substances or ingredients used in the preparation thereof.

History: En. Sec. 2, Ch. 256, L. 1921; 36 C.J.S. Food § 1.
re-en. Sec. 2598, R. C. M. 1921.

What is "food" within meaning of statute. 17 ALR 1282.

Collateral References

Food ⌘ 1½.

27-120. (2599) Penalty for violation of act—disposal of fines. Any person who violates provisions of this act shall be guilty of a misdemeanor and upon conviction, for the first offense, shall be punished by a fine of not less than twenty-five dollars nor more than seventy-five dollars, and for the second offense by a fine of not less than fifty dollars nor more than two hundred dollars, and for the third and subsequent offenses by a fine of not more than one hundred dollars and imprisonment in the county jail for not less than thirty days nor more than ninety days. All fines collected for violations of the provisions of this act shall be paid to the county treasurer of the proper county, who shall remit the same to the state treasurer of the state of Montana, and said moneys shall be placed to the credit of the general fund as provided by law.

History: En. Sec. 3, Ch. 256, L. 1921; ⌘ 20; Food ⌘ 16; Health ⌘ 38; Poisons ⌘ 4.
re-en. Sec. 2599, R. C. M. 1921.

References

Bolitho v. Safeway Stores, Inc., 109 M 213, 219, 95 P 2d 443.

2 C.J.S. Adulteration § 19; 28 C.J.S. Druggists § 5; 36 C.J.S. Fines § 19; 36 C.J.S. Food § 31; 39 C.J.S. Health § 30; 72 C.J.S. Poisons § 7.

Collateral References

Adulteration ⌘ 7; Druggists ⌘ 11; Fines

CHAPTER 2

REGULATION, MANAGEMENT AND SALE OF INSECTICIDES, FUNGICIDES, RODENTICIDES, HERBICIDES AND OTHER ECONOMIC POISONS

Section 27-201. Short title.

27-202. Definitions for purposes of Montana Insecticide, Fungicide, and Rodenticide Act of 1947—state board of health charged with administration and enforcement of act.

27-203. Prohibited acts.

27-204. Registration.

27-205. Determinations—rules and regulations—uniformity.

27-206. Enforcement.

27-207. Exemptions.

27-208. Penalties.

27-209. Seizures.

27-210. Agents and appointees of board—delegation of duties.

27-211. Cooperation.

27-212. Separability.

27-201. Short title. This act may be cited as the Montana Insecticide, Fungicide, and Rodenticide Act of 1947.

History: En. Sec. 1, Ch. 263, L. 1947.

2 C.J.S. Adulteration § 3; 28 C.J.S. Druggists § 6; 72 C.J.S. Poisons § 2 et seq.

Collateral References

Adulteration ⌘ 3; Druggists ⌘ 5; Poisons ⌘ 2.

27-202. Definitions for purposes of Montana Insecticide, Fungicide, and Rodenticide Act of 1947—state board of health charged with administration and enforcement of act. (a) The term “economic poison” means any substance or mixture of substances intended for preventing, destroying, repelling, or mitigating any insects, rodents, fungi, weeds, or other forms of plant or animal life or viruses, except viruses or fungi on or in living man or other animals, which the director of the agricultural experiment station of Montana state college shall declare to be a pest.

(b) The term “insecticide” means any substance or mixture of substances intended for preventing, destroying, repelling, or mitigating any insects which may be present in any environment whatsoever.

(c) The term “fungicide” means any substance or mixture of substances intended for preventing, destroying, repelling, or mitigating any fungi.

(d) The term “rodenticide” means any substance or mixture of substances intended for preventing, destroying, repelling, or mitigating rodents or any other vertebrate animals which the director of the agricultural experiment station shall declare to be a pest.

(e) The term “herbicide” means any substance or mixture of substances intended for preventing, destroying, repelling, or mitigating any weed.

(f) The term “insect” means any of the numerous small invertebrate animals generally having the body more or less obviously segmented, for the most part belonging to the class insecta, comprising six-legged, usually winged forms, as, for example, beetles, bugs, bees, flies, and to other allied classes of arthropods whose members are wingless and usually have more than six legs, as for example, spiders, mites, ticks, centipedes, and wood lice.

(g) The term “fungi” means all non-chlorophyll-bearing thallophytes (that is, all non-chlorophyll-bearing plants of a lower order than mosses and liverworts) as, for example, rusts, smuts, mildews, molds, yeasts, and bacteria, except those on or in living man or other animals.

(h) The term “weed” means any plant which grows where not wanted.

(i) The term “ingredient statement” means either:

(1) a statement of the name and percentage of each active ingredient, together with the total percentage of the inert ingredients, in the economic poison; or

(2) a statement of the name of each active ingredient, together with the name of each and total percentage of the inert ingredients, if any there be, in the economic poison (except Option 1 shall apply if the preparation is highly toxic to man, determined as provided in section 27-205); and, in addition to (1) or (2) in case the economic poison contains arsenic in any form a statement of the percentages of total and water soluble arsenic, each calculated as elemental arsenic.

(j) The term “active ingredient” means an ingredient which will prevent, destroy, repel, or mitigate insects, fungi, rodents, weeds, or other pests.

(k) The term “inert ingredient” means an ingredient which is not an active ingredient.

(l) The term "antidote" means the most practical immediate treatment in case of poisoning and includes first aid treatment.

(m) The term "person" means any individual, partnership, association, corporation, or organized group of persons whether incorporated or not.

(n) The term "board" means the state board of health of the state of Montana, hereby charged with the responsibility of administering and enforcing this act.

(o) The term "registrant" means the person registering any economic poison pursuant to the provisions of this act.

(p) The term "label" means the written, printed, or graphic matter on, or attached to, the economic poison, or the immediate container thereof, and the outside container or wrapper of the retail package, if any there be, of the economic poison.

(q) The term "labeling" means all labels and other written, printed, or graphic matter,

- (1) upon the economic poison or any of its containers or wrappers;
- (2) accompanying the economic poison at any time;
- (3) to which reference is made on the label or in literature accompanying the economic poison, except when accurate, nonmisleading reference is made to current official publications of the United States departments of agriculture or interior, the United States public health service, state experiment stations, state agricultural colleges, or other similar federal institutions or official agencies of this state or other states authorized by law to conduct research in the field of economic poisons.

(r) The term "adulterated" shall apply to any economic poison if its strength or purity falls below the professed standard or quality as expressed on labeling or under which it is sold, or if any substance has been substituted wholly or in part for the article, or if any valuable constituent of the article has been wholly or in part abstracted.

(s) The term "misbranded" shall apply:

- (1) to any economic poison if its labeling bears any statement, design, or graphic representation relative thereto or to its ingredients which is false or misleading in any particular;
- (2) to any economic poison:
 - (a) if it is an imitation of or is offered for sale under the name of another economic poison;
 - (b) if its labeling bears any reference to registration under this act;
 - (c) if the labeling accompanying it does not contain instructions for use which are necessary and, if complied with, adequate for the protection of the public;
 - (d) if the label does not contain a warning or caution statement which may be necessary and, if complied with, adequate to prevent injury to living man and other vertebrate animals;
 - (e) if the label does not bear an ingredient statement on that part of the immediate container and on the outside container or wrapper, if there be one, through which the

- ingredient statement on the immediate container cannot be clearly read, of the retail package which is presented or displayed under customary conditions of purchase;
- (f) if any word, statement, or other information required by or under the authority of this act to appear on the labeling is not prominently placed thereon with such conspicuousness (as compared with other words, statements, designs, or graphic matter in the labeling) and in such terms as to render it likely to be read and understood by the ordinary individual under customary conditions of purchase and use, or
 - (g) if in the case of an insecticide, fungicide, or herbicide, when used as directed or in accordance with commonly recognized practice it shall be injurious to living man or other vertebrate animals or vegetation, except weeds, to which it is applied, or to the person applying such economic poison.

History: En. Sec. 2, Ch. 263, L. 1947;
amd. Sec. 1, Ch. 239, L. 1953.

27-203. Prohibited acts. (a) It shall be unlawful for any person to distribute, sell, or offer for sale within this state or deliver for transportation or transport in intrastate commerce or between points within this state through any point outside this state any of the following:

- (1) Any economic poison which has not been registered pursuant to the provisions of section 27-203 [27-204] or any economic poison if any of the claims made for it or any of the directions for its use differ in substance from the representations made in connection with its registration, or if the composition of an economic poison differs from its composition as represented in connection with its registration; provided, that, in the discretion of the board, a change in the labeling or formula of an economic poison may be made within a registration period without requiring re-registration of the product.
- (2) Any economic poison unless it is the registrant's or the manufacturer's unbroken immediate container, and there is affixed to such container, and to the outside container or wrapper of the retail package, if there be one through which the required information on the immediate container can not be clearly read, a label bearing:
 - (a) the name and address of the manufacturer, registrant, or person for whom manufactured;
 - (b) the name, brand, or trade mark under which said article is sold; and,
 - (c) the net weight or measure of the content subject, however, to such reasonable variations as the director may permit.
- (3) Any economic poison which contains any substance or substances in quantities highly toxic to man, determined as provided in section 27-205 unless the label shall bear, in addition to any other matter required by this act,

- (a) the skull and crossbones;
 - (b) the word "poison" prominently, in red, on a background of distinctly contrasting color; and,
 - (c) a statement of an antidote for the economic poison.
- (4) The economic poison commonly known as standard lead arsenate, basic lead arsenate, calcium arsenate, magnesium arsenate, zinc arsenate, zinc arsenite, sodium fluoride, sodium fluosilicate, and barium fluosilicate unless they have been distinctly colored or discolored as provided by regulations issued in accordance with this act, or any other white powder economic poison which the board, after investigation of and after public hearing on the necessity for such action for the protection of the public health and the feasibility of such coloration or discoloration, shall, by regulation, require to be distinctly colored or discolored; unless it has been so colored or discolored; provided, that the board may exempt any economic poison to the extent that it is intended for a particular use or uses from the coloring or discoloring required or authorized by this section if it determines that such coloring or discoloring for such use or uses is not necessary for the protection of the public health.
- (5) Any economic poison which is adulterated or misbranded.
- (b) It shall be unlawful:
- (1) for any person to wilfully or maliciously detach, alter, deface, or destroy, in whole or in part, any label or labeling provided for in this act or regulations promulgated hereunder, or to add any substance to, or take any substance from, an economic poison in a manner that may defeat the purpose of this act;
 - (2) for any person to use for his own advantage or to reveal, other than to the board or proper officials or employees of the state or to the courts of this state in response to a subpoena, or to physicians, or in emergencies to pharmacists and other qualified persons, for use in the preparation of antidotes, any information relative to formulas of products acquired by authority of section 27-204.

History: En. Sec. 3, Ch. 263, L. 1947; was inserted by the compiler to correct
 amd. Sec. 2, Ch. 239, L. 1953. an apparent error since the section providing for registration is section 27-204.

Compiler's Note

The bracketed section number 27-204

27-204. Registration. (a) Every economic poison which is distributed, sold, or offered for sale within this state or delivered for transportation or transported in intrastate commerce or between points within this state through any point outside this state shall be registered in the office of the board, and such registration shall be renewed annually; provided, that products which have the same formula, are manufactured by the same person, the labeling of which contains the same claims, and the labels of which bear a designation identifying the product as the same economic poison which may be registered as a single economic poison; and additional names and labels shall be added by supplement statements during the cur-

rent period of registration; and provided, further, that any economic poison imported into this state, which is subject to the provisions of any federal act providing for the registration of economic poisons and which has been duly registered under the provisions of said act, may, in the discretion of the board, be exempted from registration under this act, when sold or distributed in the unbroken immediate container in which it was originally shipped. The registrant shall file with the board a statement including,

- (1) the name and address of the registrant and the name and address of the person whose name will appear on the label, if other than the registrant;
- (2) the name of the economic poison;
- (3) a complete copy of the labeling accompanying the economic poison and a statement of all claims to be made for it including directions for use; and
- (4) if requested by the board a full description of the test made and the results thereof upon which the claims are based. In the case of renewal of registration, a statement shall be required only with respect to information which is different from that furnished when the economic poison was registered or last re-registered.

(b) The board, whenever it deems it necessary in the administration of this act, may require the submission of the complete formula of any economic poison. If it appears to the board that the composition of the article is such as to warrant the proposed claims for it and if the article and its labeling and other material required to be submitted comply with the requirements of section 27-203, it shall register the article.

(c) If it does not appear to the board that the article is such as to warrant the proposed claims for it or if the article and its labeling and other material required to be submitted do not comply with the provisions of this act, it shall notify the registrant of the manner in which the article, labeling, or other material required to be submitted fail to comply with the act so as to afford the registrant an opportunity to make the necessary corrections. If, upon receipt of such notice, the registrant insists that such corrections are not necessary and requests in writing that the article be registered, the board shall register the article, under protest, and such registration shall be accompanied by a warning, in writing, to the registrant of the apparent failure of the article to comply with the provisions of the act. In order to protect the public, the board, on its own motion, may at any time, cancel the registration of an economic poison and in lieu thereof issue a registration under protest in accordance with the foregoing procedure. In no event shall registration of an article, whether or not protested, be construed as a defense for the commission of any offense prohibited under section 27-203.

(d) Notwithstanding any other provision of this act, registration is not required in the case of an economic poison shipped from one plant within this state to another plant within this state operated by the same person.

(e) Nothing in this act shall apply to wholesalers or retailers selling economic poisons in the manufacturers' original unbroken packages in Montana.

History: En. Sec. 4, Ch. 263, L. 1947;
amd. Sec. 3, Ch. 239, L. 1953.

27-205. Determinations—rules and regulations—uniformity. (a) The director of the agricultural experiment station of Montana state college is authorized, after opportunity for a hearing,

(1) to declare as a pest any form of plant or animal life or virus which is injurious to plants, men, domestic animals, articles, or substances.

(b) The state board of health is authorized after opportunity for a hearing,

(1) to determine whether economic poisons are highly toxic to man; and,

(2) to determine standards of coloring or discoloring for economic poisons, and to subject economic poisons to the requirements of section 27-203 (a) (4).

(c) The board is authorized, after due public hearing, to make appropriate rules and regulations for carrying out the provisions of this act, including rules and regulations providing for the collection and examination of samples of economic poisons.

(d) In order to avoid confusion endangering the public health, resulting from diverse requirements, particularly as to the labeling and coloring of economic poisons, and to avoid increased costs to the people of this state due to the necessity of complying with such diverse requirements in the manufacture and sale of such poisons, it is desirable that there should be uniformity between the requirements of the several states and the federal government relating to such poisons. To this end the board is authorized, after due public hearing, to adopt by regulation such regulations, applicable to and in conformity with the primary standards established by this act, as have been or may be prescribed in the United States department of agriculture with respect to economic poisons, as the regulations of the board.

(e) All rules and regulations promulgated under authority granted by paragraph b (1) (2), paragraph c, and paragraph d, must be approved by the board and, also, by the director of the agricultural experiment station of Montana state college.

History: En. Sec. 5, Ch. 263, L. 1947;
amd. Sec. 4, Ch. 239, L. 1953.

27-206. Enforcement. (a) The examination of economic poisons shall be made under the direction of the board for the purpose of determining whether they comply with the requirements of this act. If it shall appear from such examination that an economic poison fails to comply with the provisions of this act, and the board contemplates instituting criminal proceedings against any person, the board shall cause appropriate notice to be given to such person. Any person so notified shall be given an opportunity to present his views, either orally or in writing, with regard to

such contemplated proceeding and if thereafter in the opinion of the board it shall appear that the provisions of the act have been violated by such person, then the board shall refer the facts to the county attorney for the county in which the violation shall have occurred with a copy of the results of the analysis or the examination of such article: provided, however, that nothing in this act shall be construed as requiring the board to report for prosecution or for the institution of libel proceedings minor violations of the act whenever it believes that the public interests will be best served by a suitable notice of warning in writing.

(b) It shall be the duty of each county attorney to whom any such violation is reported to cause appropriate proceedings to be instituted and prosecuted in the district court without delay.

(c) The board shall, by publication in such manner as it may prescribe, give notice of all judgments entered in actions instituted under the authority of this act.

History: En. Sec. 6, Ch. 263, L. 1947;
amd. Sec. 5, Ch. 239, L. 1953.

27-207. Exemptions. The penalties provided for violations of section 27-203(a) shall not apply to:

- (1) registered pharmacists regulated under the laws of this state, wholesalers or retailers selling economic poisons in the manufacturers' original unbroken packages in Montana;
- (2) any carrier while lawfully engaged in transporting an economic poison within this state, if such carrier shall, upon request, permit the board or its designated agent to copy all records showing the transactions in and movement of the articles;
- (3) public officials of this state and the federal government engaged in the performance of their official duties; provided that such officials when in charge of large scale control campaigns shall keep accurate records as to the storage and disposal of economic poisons placed under their control;
- (4) the manufacturer or shipper of an economic poison for experimental use only,
 - (a) by or under the supervision of an agency of this state or of the federal government authorized by law to conduct research in the field of economic poisons, or
 - (b) by others if the economic poison is not sold and if the container thereof is plainly and conspicuously marked "For experimental use only—Not to be sold," together with the manufacturer's name and address: provided, however, that if a written permit has been obtained from the board, economic poisons may be sold for experiment purposes subject to such restrictions and conditions as may be set forth in the permit.

History: En. Sec. 7, Ch. 263, L. 1947;
amd. Sec. 6, Ch. 239, L. 1953.

27-208. Penalties. (a) Any person violating section 27-203 (a) (1) shall be guilty of a misdemeanor and upon conviction shall be fined not more

than one hundred dollars (\$100.00), nor less than twenty-five dollars (\$25.00).

(b) Any person violating any provision of this act other than section 27-203 (a) (1) shall be guilty of a misdemeanor and upon conviction shall be fined not more than fifty dollars (\$50.00) for the first offense and upon conviction for any subsequent offense shall be fined not more than two hundred fifty dollars (\$250.00), nor less than fifty dollars (\$50.00), provided, that any offense committed more than five (5) years after a previous conviction shall be considered a first offense; and provided, further, that in any case where a registrant was issued a warning by the director pursuant to the provisions of this act, such registrant shall upon conviction of a violation of any provision of this act other than section 27-203 (a) (1) be fined not more than five hundred dollars (\$500.00), or imprisoned for not more than one (1) year, or be subject to both such fine and imprisonment; and the registration of the article with reference to which the violation occurred shall terminate automatically. An article, the registration of which has been terminated may not again be registered unless the article, its labeling, and other material required to be submitted appear to the director to comply with all the requirements of this act.

(c) Notwithstanding any other provisions of this section, in case any person, with intent to defraud, uses or reveals information relative to formulas of products acquired under authority of section 27-204, he shall be fined not more than five hundred dollars (\$500.00), or imprisoned for not more than one (1) year, or both.

(d) All fines collected for violations of the provisions of this act shall be paid to the county treasurer of the proper county, who shall remit the same to the state treasurer of the state of Montana, and said moneys shall be placed to the credit of the general fund, as provided by law.

History: En. Sec. 8, Ch. 263, L. 1947.

27-209. Seizures. (a) Any economic poison that is distributed, sold, or offered for sale within this state or delivered for transportation or transported in intrastate commerce or between points within this state through any point outside this state shall be liable to be proceeded against in any district court in any county of the state where it may be found and seized for confiscation by process of libel for condemnation:

- (1) in the case of an economic poison,
 - (a) if it is adulterated or misbranded;
 - (b) if it has not been registered under the provisions of section 27-204;
 - (c) if it fails to bear on its label the information required by this act;
 - (d) if it is a white powder economic poison and is not colored as required under this act.

(b) If the article is condemned, it shall, after entry of decree, be disposed of by destruction or sale as the court may direct and the proceeds, if such article is sold, less legal costs, shall be paid to the state treasurer; provided, that the article shall not be sold contrary to the provisions of this act; and provided, further, that upon payment of costs and execution

and delivery of a good and sufficient bond conditioned that the article shall not be disposed of unlawfully, the court may direct that said article be delivered to the owner thereof for relabeling or reprocessing as the case may be.

(c) When a decree of condemnation is entered against the article, court costs and fees and storage and other proper expenses shall be awarded against the person, if any, intervening as claimant of this article.

History: En. Sec. 9, Ch. 263, L. 1947.

27-210. Agents and appointees of board—delegation of duties. The board is authorized to appoint and employ such qualified chemists or other qualified personnel, technically educated and trained, as may be necessary and proper to enable it to administer this act, and accomplish its purposes in the public interest; and the board may assign the execution of powers and duties to such personnel, under its continuing supervision; the board may also assign the execution of duties under this act to such employees of the state of Montana, or employees of political subdivisions therein, as the board may from time to time designate in writing, to aid the board in detail administration.

History: En. Sec. 10, Ch. 263, L. 1947;
amd. Sec. 7, Ch. 239, L. 1953.

27-211. Cooperation. The board is authorized and empowered to cooperate with, and enter into agreement with any other agency of this state, or political subdivision, the United States department of agriculture, and any other state or agency thereof for the purpose of carrying out the provisions of this act and securing uniformity of regulations, but the board is not empowered to commit the state to an expense not authorized by the legislative assembly.

History: En. Sec. 11, Ch. 263, L. 1947;
amd. Sec. 8, Ch. 239, L. 1953.

27-212. Separability. If any provision of this act is declared unconstitutional, or the applicability thereof to any person or circumstance is held invalid, the constitutionality of the remainder of this act and the applicability thereof to other persons and circumstances shall not be affected thereby.

History: En. Sec. 12, Ch. 263, L. 1947.

CHAPTER 3

STATE BOARD OF FOOD DISTRIBUTORS—REGULATION OF FOOD STORES AND FOOD STUFFS

- Section 27-301. Terms defined.
27-302. Board of food distributors.
27-303. Appointment and term of members.
27-304. Recommendations for appointment.
27-305. Officers—election.
27-306. Powers and duties of the state board of food distributors.
27-307. Meetings of the board of food distributors.
27-308. Per diem of members of the board.
27-309. Secretary, bond.
27-310. Food stores—permits, offenses for failure to obtain.

- 27-311. Registration—may suspend, revoke, or refuse to renew—entitled to hearing.
- 27-312. Quality of food sold—adulteration—who is responsible.
- 27-313. Fees to be deposited with treasurer—payments to be made.
- 27-314. Attorney general to be attorney for state board of food distributors—prosecutions—secretary to assist in enforcement—duties of county attorneys.
- 27-315. Licenses to be posted.
- 27-316. Penalties.
- 27-317. Title of act.

27-301. Terms defined. As used in this act—

(a) The term “food store” shall mean a grocery store, restaurant, pool hall, hotel, or other established place regularly licensed by the state board of food distributors, in which food or drinks are compounded, dispensed, vended, or sold at retail.

(b) The term “food” shall mean all substances, drinks, and preparations other than drugs, offered for sale and intended for human consumption.

(c) The term “board” or “state board of food distributors” shall mean the Montana state board of food distributors.

(d) The term “secretary” shall mean the secretary of the Montana state board of food distributors.

(e) The word “person” shall be construed to include every individual, co-partnership, corporation or association, unless the context otherwise requires.

(f) Masculine words shall include the feminine and neuter and the singular includes the plural.

History: En. Sec. 1, Ch. 49, L. 1939.

Constitutionality

This act, attacked as unconstitutional on two grounds, held, that sec. 13 thereof does not offend as against art. XII, sec. 10 Const., since the license fees collected are for a specific purpose and are not taxes collected for the ordinary expenses of state or municipal government within the meaning of that provision; held further, that sec. 14 thereof, later repealed by Sec. 2,

Ch. 123 Laws 1943 (omitted), was violative of art. XIII, sec. 1, Const., prohibiting the use of taxation moneys for private enterprise although apparently quasi-public. *Cramer v. Montana State Board of Food Distributors*, 113 M 450, 452, 129 P 2d 96.

Collateral References

Food—2.

36 C.J.S. Food § 3.

22 Am. Jur. 801, Food, generally.

27-302. Board of food distributors. The Montana state board of food distributors shall consist of three (3) food distributors, each of whom shall have had at least five (5) consecutive years of practical experience in Montana as a food distributor immediately preceding his appointment, and shall be actively engaged in the distribution of food.

History: En. Sec. 2, Ch. 49, L. 1939.

Collateral References

States—45.

81 C.J.S. States § 66.

27-303. Appointment and term of members. The members of the board shall be appointed by the governor, one in each year, each to serve for a term of three (3) years and until his successor shall have been appointed and qualified. Vacancies shall be filled by appointment for the unexpired term. Any member of the board who, during his incumbency, ceases to be actively engaged in the distribution of food in this state, shall be automatically disqualified from membership. Any member may be removed from office by

the governor upon proof of malfeasance or misfeasance in office. The members of the Montana state board of food distributors heretofore appointed and now holding office shall continue until their respective terms expire.

History: En. Sec. 3, Ch. 49, L. 1939.

Collateral References

States[⊖]46, 51, 52.

81 C.J.S. States §§ 68, 72, 77, 78.

27-304. Recommendations for appointment. The Montana state food distributors association shall recommend five (5) names for each appointment to be made, from which list the governor shall elect.

History: En. Sec. 4, Ch. 49, L. 1939.

27-305. Officers—election. The board shall annually elect from its members a president, a vice-president, a treasurer, and a secretary, who may or may not be a member.

History: En. Sec. 5, Ch. 49, L. 1939.

27-306. Powers and duties of the state board of food distributors.

(a) To regulate the quality of all food sold at retail in this state, using the state and federal pure food and drug acts as the standard.

(b) It may, by its duly authorized representative, enter and inspect any and all places where food is sold, vended, given away, or manufactured. It shall be unlawful for any person to refuse to permit or otherwise prevent such representative from entering such places and making such inspection.

(c) To report its proceedings annually to the governor with such information and recommendations as it deem proper, giving the names of all food stores licensed during the year and the items of the receipts and disbursements.

(d) To employ necessary assistants, and make rules for the conduct of its business.

(e) To perform such other duties and exercise such other powers as the provisions of the act may require.

(f) For the purposes aforesaid, it shall also be the duty of the board to make and publish uniform rules and regulations not inconsistent herewith, for carrying out and enforcing the provisions of the act.

History: En. Sec. 6, Ch. 49, L. 1939.

Collateral References

Food[⊖]5.

36 C.J.S. Food § 15.

22 Am. Jur. 866, Food, §§ 78 et seq.

Validity, construction, and application of statutes or ordinances relating to inspection of food sold at retail. 127 ALR 322.

27-307. Meetings of the board of food distributors. The board shall meet at least once every six months for the purpose of transacting its business.

History: En. Sec. 7, Ch. 49, L. 1939.

27-308. Per diem of members of the board. Each member of the board shall receive ten dollars per day for his actual services as such, and his necessary expenses in attending meetings.

History: En. Sec. 8, Ch. 49, L. 1939.

Collateral References

States[⊖]60.

81 C.J.S. States § 89.

27-309. Secretary, bond. The secretary shall receive a salary to be fixed by the board and all expenses necessarily incurred by him in the performance of his duties. He shall give such a bond as the board may from time to time require, which bond shall be approved by the board.

History: En. Sec. 9, Ch. 49, L. 1939.

27-310. Food stores—permits, offenses for failure to obtain. The state board of food distributors shall require and provide for the annual registration and licensing of every food store now or hereafter doing business within this state. Upon the payment of a fee of two dollars, the board shall issue a license and provide the insignia designating such store a "certified food store" by the state board of food distributors, to such persons as may be qualified by law to conduct a food store provided such license shall be exposed in a conspicuous place in the food store for which it is issued, and shall expire on the thirtieth day of June following the date of issue. It shall be unlawful for any person to conduct a food store unless such license has been issued to him by the board.

History: En. Sec. 10, Ch. 49, L. 1939.

Collateral References

Food \S 3.

36 C.J.S. Food \S 12.

Cross-Reference

Carrying on business without license, penalty, sec. 94-1511.

27-311. Registration—may suspend, revoke, or refuse to renew—entitled to hearing. The board may suspend, revoke or refuse to renew any registration or license obtained by false representation or fraud, or when the person to whom license or registration shall have been granted has been convicted for violation of any of the provisions of this act, or for a felony. Before any license can be revoked, the holder thereof shall be entitled to a hearing by the board, upon due notice of the time and place where such hearing shall be held. The accused may be represented by legal counsel, shall be entitled to compulsory attendance of witnesses and shall have the right of appeal to the district court of the proper county on the question of law and fact.

History: En. Sec. 11, Ch. 49, L. 1939.

27-312. Quality of food sold—adulteration—who is responsible. (a) Every proprietor or manager of a food store shall be responsible for the quality of all food sold therein, except for articles sold in the original package of the manufacturer.

(b) It shall be unlawful for any person or his agent to adulterate any food, or mix any foreign or inert substance with food, for the purpose of adulteration or cheapening same.

(c) Nothing in this act shall be construed to change any of the provisions of the Pure Food and Drug Act of Montana, being Chapter 1 of Title 27.

History: En. Sec. 12, Ch. 49, L. 1939.

Collateral References

22 Am. Jur. 866, Food, $\S\S$ 78 et seq.

Validity, construction, and application of statutes or ordinances relating to inspection of food sold at retail. 127 ALR 322.

27-313. Fees to be deposited with treasurer—payments to be made. All fees received by the state board of food distributors under this act shall

be deposited with treasurer of the board. In enforcing any and all laws affecting or pertaining to food stores licensed herein, all fines paid under the provisions of this act or in connection with the enforcement of this act or any other act concerning food stores or in connection with the enforcement thereof, shall be paid to the credit of the common school fund of the state of Montana, provided that no salary or expenses of the board of food distributors shall be paid out of the state treasury. No expenses shall be incurred by said board in excess of the revenue derived from such fees. All expenditures of said board and all expenses necessarily incurred thereby in exercise of its powers or the performance of its duties under this act, shall be paid out of said fund in hands of treasurer of the board. Payments out of said fund shall be made only by warrant or order on said funds drawn by the secretary and countersigned by the president of the state board of food distributors. The treasurer shall give such bond as the board may from time to time require.

History: En. Sec. 13, Ch. 49, L. 1939.

Constitutionality

This section does not offend against art. XII, section 10 of the Constitution, since the license fees collected are for a specific purpose and are not taxes collected for the ordinary expenses of state or municipal

government within the meaning of that constitutional provision. *Cramer v. Montana State Board of Food Distributors*, 113 M 450, 454, 129 P 2d 96.

Collateral References

Food⊕2.

36 C.J.S. Food § 3.

27-314. Attorney general to be attorney for state board of food distributors — prosecutions — secretary to assist in enforcement — duties of county attorneys. The attorney general of the state of Montana shall be the attorney for the Montana state board of food distributors but said board may employ other counsel. The secretary of the Montana state board of food distributors shall, under such rules and regulations as the board may prescribe, assist the board and the attorney general in the administration and enforcement of this act. It shall be the duty of the county attorney of the county wherein any offense hereunder is committed to prosecute the offender. Such prosecutor is authorized to examine the books of any manufacturer, druggist, store-keeper, or wholesale dealer within the state for the purpose of acquiring information to aid in the prosecution.

History: En. Sec. 15, Ch. 49, L. 1939.

27-315. Licenses to be posted. Any person, persons, firm or corporation, which, under this act, are required to have a license, shall at all times have such license posted in a conspicuous place in their place of business and shall have the same at all times available for inspection and examination by any person or citizen of the state of Montana.

History: En. Sec. 16, Ch. 49, L. 1939.

Collateral References

Food⊕3.

36 C.J.S. Food § 12.

27-316. Penalties. Any person violating any of the provisions of this act or rules and regulations hereunder, shall be guilty of a misdemeanor, unless otherwise provided.

History: En. Sec. 17, Ch. 49, L. 1939.

Collateral References

Food⊕18.

36 C.J.S. Food §§ 39, 41.

27-317. Title of act. The title of this act shall be The Food Distributors Law of 1939.

History: En. Sec. 19, Ch. 49, L. 1939.

Collateral References

Food  2.

36 C.J.S. Food § 3.

CHAPTER 4

SUPERVISION OF MILK INDUSTRY—STATE MILK CONTROL BOARD

- Section 27-401. Declaration of policy relating to milk.
 27-402. General purpose.
 27-403. Definitions.
 27-404. Milk control board.
 27-405. General powers of the milk control board.
 27-406. Markets.
 27-407. Orders fixing prices and handling charges.
 27-408. Licenses to producers, producer-distributors and distributors.
 27-409. License fees.
 27-410. Application for licenses.
 27-411. Declining, suspending and revoking licenses.
 27-412. Delinquency and penalty.
 27-413. Rules and orders.
 27-414. Rules of fair trade practices.
 27-415. Entry, inspection and investigation.
 27-416. Reports of dealers.
 27-417. Disposition of license fees and fines.
 27-418. Formation of local associations.
 27-419. Cooperative corporations.
 27-420. Hearings—fees.
 27-421. Cooperation with other governmental agencies.
 27-422. Violations made misdemeanors—penalties.
 27-423. Constructions, exceptions and limitations.
 27-424. Additional remedies.
 27-425. Transfer of assets.

27-401. Declaration of policy relating to milk. It is hereby declared:

- (a) That milk is a necessary article of food for human consumption;
- (b) That the production and maintenance of an adequate supply of healthful milk of proper chemical and physical content, free from contamination, is vital to the public health and welfare;
- (c) That the production, transportation, processing, storage, distribution and sale of milk, in the state of Montana, is an industry affecting the public health and interest;
- (d) That unfair, unjust, destructive and demoralizing trade practices have been and are now being carried on in the production, transportation, processing, storage, distribution, and sale of milk, which trade practices constitute a constant menace to the health and welfare of the inhabitants of this state and tend to undermine the sanitary regulations and standards of content and purity of milk;
- (e) That health regulations alone are insufficient to prevent disturbances in the milk industry and to safe-guard the consuming public from further inadequacy of a supply of this necessary commodity;
- (f) That it is the policy of this state to promote, foster and encourage the intelligent production and orderly marketing of fluid milk and cream; to eliminate speculation and waste, and to make the distribution thereof

between the producer and consumer as direct as can be efficiently and economically done, and to stabilize the marketing of such commodities;

(g) That investigations have revealed and experience has shown that, due to the nature of milk and the conditions surrounding the production and marketing of milk, and due to the vital importance of milk to the health and well being of the citizens of this state, it is necessary to invoke the police powers of the state to provide a constant supervision and regulation of the milk industry of the state to prevent the occurrence and recurrence of those unfair, unjust, destructive, demoralizing and chaotic conditions and trade practices within the industry, which have in the past affected the industry and which constantly threatened to be revived within the industry and to disrupt or destroy an adequate supply of pure and wholesome milk to the consuming public and to the citizens of this state;

(h) That fluid milk is a perishable commodity, which is easily contaminated with harmful bacteria, which cannot be stored for any great length of time, which must be produced and distributed fresh daily, and the supply of which cannot be regulated from day to day, but, due to natural and seasonal conditions, must be produced on a constantly uniform and even basis;

(i) That the demand for this perishable commodity fluctuates from day to day and from time to time making it necessary that the producers and distributors shall produce and carry on hand a surplus of milk in order to guarantee and insure to the consuming public an adequate supply at all times, which surplus must of necessity be converted into by-products of milk at great expense and oftentimes at a loss to the producer and distributor;

(j) That this surplus of milk, though necessary and unavoidable, unless regulated, tends to undermine and destroy the fluid milk industry, which causes producers to relax their diligence in complying with the provisions of the health authorities and oftentimes to produce milk of an inferior and unsanitary quality;

(k) That investigation and experience have further shown that, due to the nature of milk and the conditions surrounding its production and marketing, unless the producers, distributors, and others engaged in the marketing of milk are guaranteed and insured a reasonable profit on milk, both the supply and quality of milk are affected to the detriment of, and against the best interest of the citizens of this state whose health and well-being are thereby vitally affected;

(l) That, where no supervision and regulation are provided for the orderly and profitable marketing of milk, past experience has shown that the credit status of both producers and distributors of milk is adversely affected to a serious degree thereby entailing loss and hardship upon all within the community with whom these producers and distributors carry on business relations;

(m) That, due to the nature of milk and the conditions surrounding its production and distribution the natural law of supply and demand has been found inadequate to protect the industry in this and other states, and in the public interest it is necessary to provide state supervision and regulation of the fluid milk industry in this state.

History: En. Sec. 1, Ch. 204, L. 1939.

Cross-References

Bottles and containers, measure regulations, secs. 90-140, 90-141.

Dairy products, sales regulations, sec. 3-2401 et seq.

Keeping cows in unhealthy places, penalty, sec. 94-1206.

Sale from diseased cows, penalty, sec. 94-35-194.

Collateral References

Food \Leftrightarrow 2, 4.

36 C.J.S. Food §§ 3, 14.

22 Am. Jur. 852, Food, §§ 60 et seq.

Constitutionality of regulations as to milk. 18 ALR 235; 42 ALR 556; 58 ALR 672; 80 ALR 1225; 101 ALR 64; 110 ALR 644; 119 ALR 243; 155 ALR 1383.

27-402. General purpose. The general purpose of this law is to protect and promote public welfare and to eliminate unfair and demoralizing trade practices in the fluid milk industry. It is enacted in the exercise of the police powers of the state.

History: En. Sec. 2, Ch. 204, L. 1939.

27-403. Definitions. As used in this act, unless the context otherwise requires, "board" means the state agency created by this act, to be known as the Montana milk control board.

"Person" means any person, firm, corporation or association.

"Producer" means any person who produces milk for fluid consumption within the state, selling same at wholesale to a distributor.

"Distributor" means any person purchasing milk and distributing same for fluid consumption within the state. Said term, however, excludes all persons purchasing milk from a dealer licensed under this act, for resale over the counter at retail, or for consumption on the premises.

"Producer-distributor" means any person both producing and distributing milk for fluid consumption within the state.

"Dealer" means any producer, distributor or producer-distributor.

"Licensee" means any person who holds a license from the board.

"Association" means any organized group of dealers in a community or marketing area which has been constituted under regulations satisfactory to the board.

"Market" means any city, town, or community of the state, or two or more of the same, designated by the board as a natural marketing area.

"Milk" means fluid milk and cream sold for consumption as such.

"Consumer" means any person or any agency, other than a dealer, who purchases milk for consumption or use.

History: En. Sec. 3, Ch. 204, L. 1939.

27-404. Milk control board. There is hereby constituted a milk control board to consist of the executive officer of the Montana livestock sanitary board, as chairman, who shall serve in ex officio capacity without compensation except for necessary expenses while engaged with the duties of the board, and four members who shall be appointed by the governor with the following qualifications: One person who is a "consumer" and who is not otherwise engaged in the milk business, one person who is a "producer" selling to a distributor, one person who is a "producer-distributor," and one person who is a "distributor." The three persons appointed from the industry shall be selected from a market or markets designated and established by the board.

All terms of appointment shall be for a term of four years except the original appointments which shall be for terms of one, two, three and four years respectively as designated by the governor. Any vacancy shall be filled by appointment by the governor for the unexpired term. Three members of the board shall constitute a quorum for the regular transaction of business.

The compensation of the appointed members of the board shall be fixed at five dollars (\$5.00) per day for each day actually engaged in the official functions of the board plus subsistence and necessary traveling expenses at the rate allowed other state employees.

The board may employ necessary assistants and appoint agents and instrumentalities but all expenditure under this act shall be paid from the receipts hereunder.

The board shall have the power, and it shall be its duty to designate an executive secretary who shall serve under the direction and at the pleasure of the board and who shall have charge of the administration of the board's orders, rules and regulations, and who shall also serve as financial officer of the board and who shall be authorized to accept or receive money paid or to be paid to the board, either as license fees or fines as provided by this act. Such person shall, before he enters upon the discharge of his duties, execute and file a bond, in such amount as may be fixed by the board, as may be provided by law for public officers.

History: En. Sec. 4, Ch. 204, L. 1939.

27-405. General powers of the milk control board. (1) The board is hereby vested with the powers, and it shall be its duty to supervise, regulate and control the fluid milk industry of the state of Montana, including the production, transportation, processing, storage, distribution and sale of milk in the state of Montana for consumption within the state, providing however, that nothing contained in this act shall be construed to abrogate or affect the status, force or operation of any provision of public health laws or the law under which the Montana livestock sanitary board is constituted together with the Montana livestock sanitary board regulations or county board of health regulations, or municipal ordinances for the promotion or protection of the public health, but the board shall have the power to cooperate with the state board of health, the Montana livestock sanitary board or any county or city board of health or the state department of agriculture, labor and industries in enforcing the provisions of this act.

(2) The board shall have the power to investigate all matters pertaining to the production, transportation, processing, storage, distribution and sale of milk in the state of Montana and to conduct hearings upon any subject pertinent to the administration of this act. The board shall have the power to subpoena milk dealers, their records, books and accounts and any other person from whom information may be desired or deemed necessary to carry out the purposes and intent of this act, and may issue commissions to take depositions of witnesses who are sick or absent from the state.

(3) It shall be the duty of any sheriff of any county of the state, when requested to do so by the board, to execute any summons, citations or notice which the board may cause to be issued, for which such sheriff shall be authorized to charge the same fee against the funds provided for the milk

control board as he might lawfully charge for the same service of such a document if issued from any district court of the state of Montana. Any person, other than a dealer who is cited for violation of the provisions of this act, or cited to show cause why his license should not be revoked, shall receive for his attendance before the milk control board or its duly designated agent the same compensation as is provided for a witness subpoenaed to appear before the district court, which shall be charged against the funds provided for the operation of the milk control board.

(4) Any duly designated agent of the board may administer oath to witnesses and may conduct hearings or investigations and any such duly designated agent of the board may sign and issue subpoenas requiring witnesses to appear before him or the board, and in addition to the manner provided above for the execution of subpoenas, summons and citations issued by the milk control board to witnesses or dealers, the board, through its designated agent shall have the power to serve said subpoenas, summons or citations upon any person by sending a copy of such subpoena, summons or citation, through the United States mail, postage prepaid, which said mail shall be registered with return receipt attached and such service shall be complete when said registered mail shall be delivered to said person and such receipt returned to the board or its designated agent, signed by the person sought to be summoned, subpoenaed, or cited. Obedience to a subpoena, summons or citation, issued by the board or any person authorized and designated by the board to issue said subpoena, summons or citation, may be enforced by application to any judge of the district court of the county in which such subpoena, summons or citation was issued or to any judge of the district court of the county in which such person subpoenaed, summoned or cited resides in the same manner as is provided by law for the grand jury of a county to enforce its subpoena or summons and with the same penalty as provided therefor for the failure of any person failing or refusing to comply with such subpoena, citation or summons.

(5) The board may act as mediator or arbitrator to settle any controversy or issue pertaining to fluid milk among or between producers, distributors, producer-distributors and/or consumers.

The operation and effect of any provision of this act, conferring a general power upon the milk control board, shall not impair or limit any specific power or powers granted to the milk control board by this act.

History: En. Sec. 5, Ch. 204, L. 1939.

Validity of municipal ordinance imposing requirements on outside producers of milk to be sold in city. 14 ALR 2d 103.

Collateral References

Food 3.

36 C.J.S. Food § 12.

27-406. Markets. The board shall exercise its powers only within and in relation to markets already designated and established or such markets as shall be established in accordance with the provisions of this act.

(a) All natural marketing areas heretofore designated as markets by the milk control board, operating under authority of any hitherto existing milk control law, shall remain as markets as designated and are hereby declared to be legally constituted markets for all purposes of this act. This act shall, immediately upon its passage, become effective in all markets which have heretofore been designated as such by any previously consti-

tuted milk control board and are functioning as such at the time of passage of this act, and all schedules, rules and regulations issued and promulgated by any previously existing milk control board in this state that at the time of passage of this act are of force and effect are hereby declared to be of force and effect and shall continue to be of force and effect until altered or rescinded in the manner provided by this act.

(b) The board shall have power, at its discretion, to establish a new market in any natural marketing area of the state that it may designate, provided that before a designated market shall be established, a canvass shall be made by the board, of all producers, producer-distributors and distributors doing business within the designated market and who are licensed by the Montana livestock sanitary board and who have been, for not less than ninety days, actually engaged in any one of the above indicated branches of the fluid milk industry and in the event that such preliminary canvass shall make it evident to the board that a majority of all the above-designated dealers representing a majority of the fluid milk sold by all said dealers licensed by the Montana livestock sanitary board are in favor of the establishment of such proposed market, the board shall proceed toward the establishment of such market but shall be restrained therefrom until such time as it shall be made evident to the board that a majority of the above-designated dealers are favorable to the establishment of such a market.

This act shall become operative with respect to a newly established market when the requirements of this act for the establishment of a new market have been complied with and when the board shall duly promulgate orders and regulations governing the same, and setting forth the date at which said orders and regulations shall go into effect.

The board shall have power, at its discretion, to disestablish a market and withdraw from functioning therein, provided that before such withdrawal and disestablishment shall take place, a canvass shall be made by the board of all producers, distributors and producer-distributors licensed under this act, and in the event that such canvass shall make it evident to the board that a majority of all the above-designated dealers representing a majority of the fluid milk sold by all the above-designated dealers are opposed to such withdrawal and disestablishment, then the board shall proceed no further toward the proposed withdrawal and disestablishment of such market. But in the event that the board is not restrained, as above provided, the proposed disestablishment of said market shall take place immediately upon due promulgation of orders to that effect by the board.

History: En. Sec. 6, Ch. 204, L. 1939.

27-407. Orders fixing prices and handling charges. Prior to the fixing of prices in any market the board shall conduct a public hearing and admit evidence under oath relative to the matters of its inquiry, at which hearing the consuming public shall be entitled to offer evidence and be heard the same as persons engaged in the milk industry. The board shall by means of such hearing and by any other means available or from facts within its own knowledge, investigate and determine what are reasonable costs and charges for producing, hauling, handling, processing, and/or other services performed in respect to milk and what prices for milk in the several locali-

ties and markets of the state, and under varying conditions, will best protect the milk industry in the state and insure a sufficient quantity of pure and wholesome milk to adults and minors in the state, and be most in the public interest.

The board shall take into consideration the balance between production and consumption of milk, the costs of production and distribution, and the purchasing power of the public.

The board after making such investigation shall fix by official order:

(a) The minimum prices to be paid by the milk dealers to producers and others for milk. The orders of the board with respect to the minimum prices to be paid to producers and others shall apply to the locality or zone in which the milk is produced in respect to the market or markets in which milk so produced is sold, and may vary in different localities or zones or markets according to varying uses and different conditions. Each order fixing prices or handling charges may classify milk by forms, classes, grades or uses as the board may deem advisable and may specify the minimum prices therefor.

(b) The minimum wholesale or retail prices to be charged for milk in its various grades and uses handled within the state for fluid consumption and wheresoever produced when sold by milk dealers whether licensed or unlicensed, to consumer; by stores to consumers except for consumption on the premises where sold; by milk dealers to other milk dealers.

A minimum wholesale or retail price to be charged for milk shall not be fixed higher than is necessary to cover the costs of ordinarily efficient and economical milk dealers, including a reasonable return upon necessary investment.

The board may, upon its own motion, or upon application in writing from any market, or from any party at interest, alter, revise or amend any official order theretofore made by the board provided that before making, revising, or amending any order fixing prices to be charged or paid for milk in any of its grades or uses, the board shall hold a public hearing on such matter in the same manner provided herein for the original fixing of prices.

The retail price to be charged for milk in quart bottles shall not be more than twice the price paid by the distributor to the producer for the same grade and butterfat content of fluid milk purchased from the producer by such distributor. The board shall make adjustment from the basic rate in prices of milk sold in less quantities than quarts and at wholesale.

History: En. Sec. 7, Ch. 204, L. 1939.

27-408. Licenses to producers, producer-distributors and distributors. In any market, where the provisions of this act apply, it shall be unlawful for any producer, producer-distributor, or distributor to produce, transport, process, store, handle, distribute, buy or sell milk unless such dealer be duly licensed as provided by this act. It shall be unlawful for any such person to buy, sell, handle, process, or distribute milk which he knows or has reason to believe has been previously dealt with or handled in violation of any provision of this act. The board may decline to grant a license, or

may suspend or revoke a license already granted, upon due cause and after hearing.

History: En. Sec. 8, Ch. 204, L. 1939.

Cross-Reference

License for producers of milk, sec. 46-232.

27-409. License fees. All persons required by this act to be licensed by the board shall pay a yearly license fee computed upon the following rates:

(a) A producer-distributor doing business during the twelve (12) months beginning October first and ending September thirtieth next preceding the license year, shall pay a license fee equal to the sum of one dollar (\$1.00) for each six hundred (600) gallons or fraction thereof of the total volume of fluid milk by him sold.

(b) A producer, doing business during the twelve (12) months beginning October first and ending September thirtieth next preceding the license year, shall pay a license fee equal to the sum of fifty cents (\$.50) for each six hundred (600) gallons or fraction thereof of the total volume of fluid milk by him sold.

(c) A distributor, doing business during the twelve (12) months beginning October first and ending September thirtieth next preceding the license year, shall pay a license fee equal to the sum of fifty cents (\$.50) for each six hundred (600) gallons or fraction thereof of the total volume of fluid milk by him sold, excepting that which is sold to another distributor.

(d) A producer-distributor or distributor, who deals in the handling of sweet cream but sells no fluid milk shall pay a license fee of one dollar (\$1.00).

(e) Any person required by this act to be licensed who, by reason of the fact that he has not previously engaged in the business, or who, for any other reason lacks the record of a full preceding year's business upon which to compute the amount of the fee of the license to be applied for, shall submit to the board such pertinent facts, records and information as the applicant may possess and the board may require concerning the volume of the applicant's business whether past or prospective as the case may be, and it shall be the duty of the board, upon the basis of the information thus or otherwise acquired to determine what, in conformity with the rates heretofore established, is a just and equitable charge for the license so applied for, and the sum so determined by the board shall be the legal license fee said applicant shall pay for the license year, or for the remaining quarter or quarters of the license year then current.

(f) The board may, if it deems advisable, permit licensees to pay license fees in installments.

(g) However, it is specifically provided with respect to the license fees for the license year beginning January first, nineteen hundred and thirty-nine, as follows:

Where any licensee has paid in to the board under the provisions of the heretofore existing milk control law any license fee or fees or assessments the board shall credit to the said licensee and apply the sum or sums so paid upon the amounts due from said licensee in payment for license or licenses required under this act; and the board is hereby authorized to adjust and equalize upon an equitable basis, all adjustment of license assessment ac-

counts requiring adjustment by reason of the repeal of the heretofore existing milk control law and the substitution therefor of the provisions of this act.

History: En. Sec. 9, Ch. 204, L. 1939.

27-410. Application for licenses. An applicant for license to operate as a producer, producer-distributor, or distributor shall file a signed application upon a blank prepared under authority of the board, and an applicant shall state such facts concerning his circumstances and the nature of the business to be conducted as in the opinion of the board are necessary for the administration of this act. Such application shall certify the applicant to be the holder of all licenses required by the Montana livestock sanitary board for the conduct of his business and such application shall be accompanied by the license fee required to be paid. The board may classify licenses and may issue licenses to dealers to carry on a certain designated kind of business only and shall require each dealer to obtain a license for each subdivision of the industry in which he may engage whether as producer, distributor, or producer-distributor and a separate license for each separate market in which he may do business, provided that this shall not apply to transactions among and between distributors. Application shall be duly made, within ten days after this act takes effect in any market, by all dealers engaged in business in such market.

In all markets the license year shall begin with January first of each year, but where the case applies, as in the establishment of a new market or the licensing of an applicant newly engaging in business, the license fee shall be reduced twenty-five per cent (25%) for each fully elapsed quarter of the license year prior to the issuance of said license, provided, however, that no license fee, for any period, shall be less than twenty-five per cent (25%) of the yearly total.

History: En. Sec. 10, Ch. 204, L. 1939.

27-411. Declining, suspending and revoking licenses. The board may decline to grant a license or may suspend or revoke a license already granted for due cause upon due notice and after hearing. The violation of any provisions of this act or of any lawful order or regulation of the board, the failure or refusal to make required statements or reports, and aggravated delinquency in the payment of license fees or any of them shall be deemed causes for which the board may, at its discretion, suspend or revoke a license, provided that no license shall be fully revoked except upon the approval of a majority of all members of the board.

History: En. Sec. 11, Ch. 204, L. 1939.

27-412. Delinquency and penalty. Any person who fails to pay his license fee when due or within the time, if any, extended by the milk control board for the payment of such license fee, shall automatically owe a penalty of ten per cent (10%) of the delinquent portion of said yearly license fee. And in the event of a license being revoked for failure to pay a license fee as required in this act, the license shall not be reinstated except upon payment, in full, of the delinquent yearly fee or the delinquent portion thereof,

as the case may be, plus a ten per cent (10%) penalty upon the delinquent amount.

History: En. Sec. 12, Ch. 204, L. 1939.

27-413. Rules and orders. The board may adopt and enforce all rules and all orders necessary to carry out the provisions of this act. Every rule or order shall be posted for public inspection in the main office of the board for thirty (30) days, and a copy filed in the office of the board, also a copy sent by registered letter to the secretary of each area, excepting an order, directed only to a person or persons named therein, which shall be served by personal delivery of a copy, or by mailing a copy, in the United States mails, with postage prepaid and properly addressed to each person to whom such order is directed, or, in the case of a corporation, to any officer or agent of the corporation upon whom a summons may be served in accordance with the provisions of the statutes of Montana. Such posting, in the main office of the board, of any rule and of any order, not required to be served as above provided, and such filing in the office of the board shall constitute due and sufficient notice to all persons affected by such a rule or order. A rule or order when duly posted and filed or served, as provided in this act, shall have the force and effect of law.

History: En. Sec. 13, Ch. 204, L. 1939.

27-414. Rules of fair trade practices. In addition to the general and special powers heretofore set forth, the board shall have the power to make and formulate, in any established market, reasonable rules and regulations governing fair trade practices as they pertain to the transaction of business among licensees under this act within that market.

History: En. Sec. 14, Ch. 204, L. 1939.

27-415. Entry, inspection and investigation. The board, or any person designated for that purpose by the board, shall have access to, and may enter, at all reasonable hours, all places where milk is produced, processed, bottled, handled or stored, or where the books, papers, records, or documents relative to such transactions are kept and shall have the power to inspect and copy the same in any place within the state, and may administer oath, and take testimony for the purpose of ascertaining facts, which, in the judgment of the board, are necessary to administer this act, but any such information so derived shall be treated as confidential by the board and shall be used by it only for the administration of this act and not for general public issue. Any member or employee of the board and any person assisting the board in the administration of this act, who shall acquire any information, while in the employ of the board, in respect to the transactions, property, files, records, or papers of the board, or who shall acquire any information, while in the employ of the board, in respect to the business or mechanical, chemical or other industrial processes belonging to or employed by any person and who shall divulge the same to any person other than members of the board or the superior of any such employee of the board, except when called upon to testify in any action or proceeding in any court, wherein the board is a party, shall be guilty of a misdemeanor.

History: En. Sec. 15, Ch. 204, L. 1939.

Collateral References

Food[Ⓒ]16.

36 C.J.S. Food § 30.

27-416. Reports of dealers. The board shall have the power to require all persons holding licenses under it to file with the board such reports at such reasonable or regular time as the board may require, showing such person's production, sale, or distribution of milk, and any information deemed by the board necessary which pertains to the production, sale or distribution of such milk, either under oath or otherwise, as the board may direct, and failure or refusal to file such reports when directed to do so by the board or its duly designated agent shall constitute grounds for the revocation of such person's license and shall constitute a violation for which such person may be fined as hereinafter provided, one or both, at the discretion of the board.

History: En. Sec. 16, Ch. 204, L. 1939.

27-417. Disposition of license fees and fines. All fines assessed in any court for violation of the provisions of this act shall be paid over by the court to the milk control board or its properly designated agent.

All moneys received by the board shall be deposited with the state treasurer and shall be placed by him in an account to be known as the milk control board fund, the state treasurer being hereby directed and authorized to keep account of said fund and pay all warrants drawn by the state auditor, pursuant to this act, out of the said fund hereby established. All such receipts, including fines assessed for violations of this act, are hereby appropriated for the purposes of this act.

History: En. Sec. 17, Ch. 204, L. 1939.

27-418. Formation of local associations. The board shall have power and it shall be the duty of the board to promote and foster in each established market, an association organized under regulations satisfactory to the board and composed of all licensees of the board and designated as the dairymen's association of such market. It shall be the function of such association to promote the mutual interests of its members and of the dairy industry, but its specific function with relation to the board shall be to provide an instrument whereby the licensees within the market may and they shall unitedly cooperate with and be of assistance to the board in determination, assembling and presentation of facts and findings relative to the costs of production, costs of distribution, and other factors upon which price schedules shall be based, and to otherwise counsel and assist the board as opportunity may afford in carrying out and enforcing the provisions of this act.

Such associations are hereby declared to be instrumentalities of the board and as such may receive as compensation for their services and as a means to their efficiency a percentage of the license fees paid to the board from the market so organized not to exceed ten per cent (10%) of the annual total of such license fees.

History: En. Sec. 18, Ch. 204, L. 1939.

27-419. Cooperative corporations. No provision of this act shall be deemed or construed to prevent or abridge the right of a cooperative corporation or association organized under the laws of the state of Montana and engaged in marketing or making collective sales of milk produced by its members, from blending the net proceeds of all its sales in various classes

and paying its producers such blended price, with such deductions therefrom and/or differentials as may be authorized under contracts between such corporation and its members, or from making collective sales of the milk of its members and/or other producers represented by or marketing through it at a blended price based upon sales thereof in the various classes and markets, or to prevent or abridge the right of any milk dealer from contracting for his milk with such cooperative association upon such basis, or to affect or impair the contracts of any such cooperative association with its members or other producers marketing their milk through such corporation, or to impair or affect any contracts which any such cooperative association has with milk dealers or others, or affect or abridge the rights and powers of any such cooperative association conferred by the laws of the state of Montana under which it is incorporated; provided, that the prices to be paid for milk marketed by or through any such corporation shall be those fixed by the order of the board.

History: En. Sec. 19, Ch. 204, L. 1939.

27-420. Hearings—fees. Each officer, other than an employee of the board, who serves any subpoena of the board, shall receive the fees legally provided for such service and each witness who appears in obedience to a subpoena, before the board or a member or its agent, shall receive for his attendance the fees and mileage provided for witnesses in civil cases in district courts, which fees shall be audited and paid in the same manner as other expenses are audited and paid upon the presentation of proper vouchers, approved by the board.

No witnesses subpoenaed at the instance of a party other than the board, or one of its members, or its agent, shall be entitled to compensation unless the board shall certify that his or her testimony was material to the matter investigated.

History: En. Sec. 20, Ch. 204, L. 1939.

27-421. Cooperation with other governmental agencies. In order to secure a uniform system of milk control, the board is hereby vested with power, and it shall be its duty to confer and cooperate with the legally constituted authorities of other states and of the United States, including the secretary of agriculture of the United States, and, for the foregoing purposes, the board shall have the power to conduct joint hearings, issue joint or concurrent orders and exercise all its powers under this act.

History: En. Sec. 21, Ch. 204, L. 1939.

27-422. Violations made misdemeanors—penalties. (a) Any person, required by this act to be licensed, who shall produce, sell, distribute, or handle milk in any way, except as a consumer, without first having obtained a license, as required of him by this act, shall be deemed guilty of a misdemeanor, and, upon conviction thereof, shall be punished by a fine not exceeding six hundred dollars (\$600.00). Each day's violation of this provision shall constitute a separate offense. A violation of any provision of this act or of any lawful rule or order of the board, including a failure to answer subpoena or to testify before the board, shall be deemed a misdemeanor punishable by a fine not exceeding six hundred dollars (\$600.00),

and each day during which such violation shall continue shall be deemed a separate violation.

(b) The district courts shall have original jurisdiction in all criminal actions for violations of the provisions of this act, and in all civil actions for the recovery or enforcement of fines, provided for in this act, and all such actions, both criminal and civil, shall be instituted, prosecuted and tried in the district court.

(c) It shall be the duty of the county attorneys and deputy county attorneys, in their respective counties, diligently to attend all inquisitions held under the provisions of this act and diligently to prosecute all violations of the laws of the state relating to the provisions of this act.

History: En. Sec. 22, Ch. 204, L. 1939.

27-423. Constructions, exceptions and limitations. The license required by this act shall be in addition to any other license required by any statute of Montana or any municipality of the state of Montana. This act shall apply to every part of the state of Montana.

If any portion of this act is held invalid or unconstitutional such holding shall not affect the validity of the act as a whole, or any part thereof which can be given effect without the part so held to be unconstitutional or invalid.

No provision of this act shall apply or be construed to apply to foreign or interstate commerce except insofar as the same may be effective in compliance with the United States constitution, and with the laws of the United States. It is the intention of the legislature, however, that the instant, whenever that may be, that the handling, within the state by a dealer, of milk produced outside of the state, becomes the subject of regulation by the state in the exercise of its police powers, the provisions of this act, affecting intrastate milk, shall immediately apply and the powers conferred by this act shall attach thereto.

History: En. Sec. 23, Ch. 204, L. 1939.

27-424. Additional remedies. The board or its authorized agent may institute such action at law or in equity as may appear necessary to enforce compliance with any provision of this act or to enforce compliance with any order, rule or regulation, of the board pursuant to the provisions of this act or to obtain a judicial interpretation of any of the foregoing, and in addition to any other remedy, the board, after unanimous consent of all members of the board, may apply to the district court of the district wherein the action arises, for relief by injunction, mandamus or any other appropriate remedy in equity without being compelled to allege or prove that an adequate remedy at law does not otherwise exist, nor shall the board be required to give or post bond in any action to which it is a party whether upon appeal or otherwise. All legal actions may be brought by or against the board in the name of the Montana milk control board and it shall not be necessary in any action to which the board is a party that such action be brought by or against the state of Montana on relation of the Montana milk control board. The board shall have the power to institute action by its own attorney or counsellor, but it shall have the right, if it deems advisable, to call upon any county attorney to represent it in the district court, of the county in which the action is taken, or the attorney general to represent

it on appeal to the supreme court of Montana, or it may associate its own counsellor with either in any court.

History: En. Sec. 24, Ch. 204, L. 1939.

27-425. Transfer of assets. All assets, appurtenances and funds of the previously existing milk control board are hereby transferred to the herein created board.

History: En. Sec. 25, Ch. 204, L. 1939.

CHAPTER 5

OLEOMARGARINE

- Section 27-501. Short title and legislative intent.
 27-502. Definitions.
 27-503. Prohibited acts.
 27-504. Repealed.
 27-505. Jurisdiction.
 27-506. Repealed.
 27-507. Sanitary control of oleomargarine products.
 27-508. Sampling and testing of oleomargarine products.
 27-509. Test of samples—rules of evidence.
 27-510. Condemnation of unfit products.
 27-511. Standard oleomargarine measure.
 27-512. Fat content requirement for oleomargarine.
 27-513. Wrapping oleomargarine and marking package.
 27-514. Reports by manufacturers of oleomargarine.
 27-515. Wholesale licenses.
 27-516. Manufacturer's license.
 27-517. Revocation of licenses.
 27-518. Penalty.
 27-519. Power of commissioner of agriculture, labor and industry to promulgate rules and regulations.
 27-520. Construction—articles excepted.
 27-521. Serving of yellow oleomargarine in public eating places regulated.
 27-522. Advertising of oleomargarine regulated.
 27-523. Penalty.

27-501. Short title and legislative intent. This act shall be cited as the "Oleomargarine Law," and is intended to legalize, and regulate the commerce within the state of Montana of oleomargarine, both white and colored and to protect consumers from confusion, deception, and unfair trade practices in the traffic in yellow oleomargarine.

History: En. Sec. 1, Ch. 138, L. 1949; **Collateral References**
 amd. sec. 1, Ch. 99, L. 1953. Food 8.

36 C.J.S. Food § 18.

27-502. Definitions. (a) For the purposes of this act the following manufactured substances, mixtures, and compounds with or without butter, milk, skim milk, or cream are and shall be considered "oleomargarine";

(1) All substances heretofore known as oleomargarine, oleo, margarine, oleomargarine oil, butterine, lardine, suine and neutral.

(2) All mixtures and compounds containing any edible oils or fats other than milk fat, and all mixtures and compounds containing milk fat, if (A) made in imitation or semblance of butter, or (B) calculated or intended to be sold as butter or for butter or as butter substitutes, or (C) churned, emulsified, or mixed in cream, milk, skim milk, water, or other liquid and

containing moisture in excess of one per centum (1%) with or without common salt.

(b) For the purposes of this act "yellow oleomargarine" is "oleomargarine" as defined in subsection (a) of this section, having a tint or shade containing more than one and six-tenths degrees (1.6°) of yellow, or of yellow and red collectively, but with an excess of yellow over red, measured in terms of the Lovibond tintometer scale or its equivalent.

(c) For the purposes of this act:

(1) The word "manufacturer" means any person licensed by the state of Montana for the purpose of engaging in the making, producing, processing or forming of oleomargarine by any method, means or process;

(2) The word "wholesaler" means any person licensed by the state of Montana for the purpose of distributing or reselling oleomargarine to a retailer;

(3) The word "retailer" means any person who comes into possession of oleomargarine for the purpose of selling or distributing it to the consumer;

(4) The word "person" means one or more individuals, firms, corporations, partnerships or associations.

History: En. Sec. 2, Ch. 138, L. 1949.

27-503. Prohibited acts. The manufacture, sale, offering or exposing for sale, transportation, serving in a public eating place, having in possession with intent to sell of yellow oleomargarine except in the manner provided by this act are hereby prohibited.

History: En. Sec. 3, Ch. 138, L. 1949;
amd. Sec. 2, Ch. 99, L. 1953.

27-504. Repealed—Chapter 99, Laws of 1953.

Repeal

This section (Sec. 4, Ch. 138, L. 1949), providing the penalty for a violation of sections 27-503 or 27-506, was repealed by

Sec. 9, Ch. 99, Laws 1953, effective February 27, 1953. The present penalty section for sec. 27-503 is sec. 27-523.

27-505. Jurisdiction. The district court shall have jurisdiction to restrain violations of section 27-503, and shall have jurisdiction of all offenses and actions under this act.

History: En. Sec. 5, Ch. 138, L. 1949.

27-506. Repealed—Chapter 99, Laws of 1953.

Repeal

This section (Sec. 6, Ch. 138, L. 1949), relating to a condemnation of yellow oleo-

margarine, was repealed by Sec. 9, Ch. 99, Laws 1953, effective February 27, 1953.

27-507. Sanitary control of oleomargarine products. The commissioner of agriculture or his authorized agent, acting upon reasonable cause, may order to be closed any factory, plant or place where oleomargarine is manufactured, when he finds such factory, plant or place not to be kept in a sanitary condition, and may order to cease sale, distribution or exchange of oleomargarine any wholesaler or jobber whose facilities for the storage, shipping or handling of oleomargarine are found not to be kept in a sanitary condition. Any manufacturer ordered to close, or any wholesaler or jobber ordered to cease sale, distribution or exchange of oleomargarine, as

aforesaid, who shall violate such order by resuming the manufacture, or by resuming the sale, distribution or exchange of oleomargarine before authorization so to do by the commissioner of agriculture or his authorized agent, shall be deemed guilty of a misdemeanor and shall be punished by a fine of not less than twenty-five dollars (\$25.00), nor more than two hundred and fifty dollars (\$250.00), or by imprisonment in the county jail for not less than ten (10) days, nor more than thirty (30) days, or by both such fine and imprisonment. In addition to such fine or imprisonment, any person or persons, firm or corporation manufacturing, or wholesaling or jobbing oleomargarine after being ordered to close or cease manufacture, sale, distribution or exchange, and before receiving notice to resume such operation, who shall violate such order by resuming operation, shall be subject to payment of an additional fine of twenty-five dollars (\$25.00) for each day the manufacture, wholesaling or jobbing is continued in violation of such order, upon conviction of operation in violation of such order, and upon order of the court. The commissioner of agriculture or any of his authorized agents shall have the right to enter any manufacturing plant or place, factory, building, store, railroad depot, express office, storage facility, shipping facility or handling facility, or other place where oleomargarine is produced, manufactured, sold or kept in commercial storage or while in intra-state transit from one place to another, for the purpose of inspection of such oleomargarine to obtain samples of the same for testing or analysis.

History: En. Sec. 7, Ch. 138, L. 1949.

27-508. Sampling and testing of oleomargarine products. The department of agriculture, labor and industry is hereby charged with the duty to provide suitable means for the taking of samples of all oleomargarine products.

Said department shall have the authority and it shall be its duty to take such samples from any person, firm or corporation engaged in the handling, manufacturing, wholesaling or jobbing of oleomargarine, but the agent of the department taking the same must at the time of such taking, pay or offer to pay for them at their full value, and if payment is accepted, such agent must take a receipt for the same from the person from whom the samples are obtained.

Said department shall have the authority and it shall be its duty to conduct the Lovibond tintometer test for determination of "yellow oleomargarine," as defined in section 27-502(b) hereof, and the commissioner of agriculture, labor and industry is hereby authorized and empowered to promulgate and enforce such reasonable rules and regulations relating to such test as may be necessary to effect enforcement of this act.

History: En. Sec. 8, Ch. 138, L. 1949.

Compiler's Note

The title of the commissioner of agri-

culture, labor and industry as used in this section now has reference to the commissioner of agriculture, see sec. 3-101.1.

27-509. Test of samples—rules of evidence. The department of agriculture, labor and industry may require a chemist from the state board of health to test and analyze samples of oleomargarine taken by it. All such samples and the record of their analysis or test, when identified as to the sample of the record thereof by the oath of the officer taking the same, or

when verified as to the analysis or test by the oath of the chemist making the same, shall be admissible in evidence in any court of this state or in any prosecution for the violation of this act or for the violation of any rule or regulation of the department as prima facie evidence of the facts disclosed thereby.

History: En. Sec. 9, Ch. 138, L. 1949.

Compiler's Note

The title of the commissioner of agri-

culture, labor and industry in this section now has reference to the commissioner of agriculture, see sec. 3-101.1.

27-510. Condemnation of unfit products. The commissioner of agriculture, labor and industry, in person or through his agents or employees, is hereby authorized to condemn any oleomargarine which is found to be impure, unclean, unwholesome or stale, or that is produced, manufactured, handled, shipped or kept in an unsanitary place, or that is adulterated (as the word "adulterated" is defined by section 27-102); and, he shall have the power, acting in person or through his agents or employees, upon proper finding and order, to cause to be destroyed such condemned oleomargarine.

History: En. Sec. 10, Ch. 138, L. 1949.

Compiler's Note

The title of the commissioner of agri-

culture, labor and industry in this section now has reference to the commissioner of agriculture, see sec. 3-101.1.

27-511. Standard oleomargarine measure. The standard measure for the sale of oleomargarine, in the state of Montana, shall be sixteen (16) ounces, (avoirdupois weight) to the pound, exclusive of the wrapper or container, no tolerance in deficiency being allowed. All oleomargarine sold, offered or exposed for sale shall be in packages, paper containers or wrappers of one (1) or two (2) pounds, net standard avoirdupois weight, no tolerance for deficiency being allowed; provided, however, that packages of the weight specified may be made up of smaller component packages of wrapped oleomargarine in multiples of four (4) or eight (8) ounces each.

History: En. Sec. 11, Ch. 138, L. 1949.

27-512. Fat content requirement for oleomargarine. Any product manufactured, sold, exchanged, offered or exposed for sale or exchange as oleomargarine shall contain not less than eighty per centum (80%) vegetable or animal fat, no tolerance for deficiency being allowed.

History: En. Sec. 12, Ch. 138, L. 1949.

27-513. Wrapping oleomargarine and marking package. All oleomargarine sold or exchanged, or offered or exposed for sale or exchange at retail in the state of Montana, wherever manufactured, must be wrapped in parchment paper, cellophane, plastic material, or other suitable wrapping material, and must have the wholesaler's or manufacturer's name clearly printed in a conspicuous place on the outside of the package in which sold. Further, on the outside of each such package shall be plainly marked, stamped, labeled or printed in plain, boldfaced letters, one-half ($\frac{1}{2}$) inch high, the word "oleomargarine." And there shall also be plainly marked, stamped, labeled or printed thereon a statement of the name, and the quantity per pound of all preservatives, vitamins, vitamin extracts or other artificial ingredients used therein, or added thereto. On the outside of each package of oleomargarine so sold or exchanged or offered for sale or ex-

change shall appear, in addition to the foregoing, the words "16 ounces net weight," "1 lb. net weight," "32 ounces net weight," or "2 lbs. net weight" as are appropriate identification of the weight of the contents of such package.

History: En. Sec. 13, Ch. 138, L. 1949.

27-514. Reports by manufacturers of oleomargarine. Every person, firm or corporation manufacturing oleomargarine within this state is hereby charged with the duty of rendering to the department of agriculture, labor and industry once a month, not later than the tenth day of each month, a full report of the amount of oleomargarine manufactured during the preceding month. If one person, firm or corporation carries on both manufacturing and wholesaling or jobbing, then a separate report reflecting the manufacturing operation, as required hereinabove shall be filed. Any person failing to render the report required by this section, or failing to make said report when due, shall be guilty of a misdemeanor and subject to the penalties provided in section 27-518 for the violation of the provisions of this act.

History: En. Sec. 14, Ch. 138, L. 1949.

Compiler's Note

The title of the commissioner of agri-

culture, labor and industry in this section now has reference to the commissioner of agriculture, see sec. 3-101.1.

27-515. Wholesale licenses. It shall hereafter be unlawful for any person, firm or corporation, by himself, his or its servant or agent, to sell, exchange or offer for sale at wholesale, or have in his or its possession with intent to sell or offer for sale or exchange at wholesale any oleomargarine, as herein defined, without first securing an annual license from the department of agriculture, labor and industry of the state of Montana to conduct such sale or exchange. The fee for such license shall be twenty dollars (\$20.00) each year. Those persons, firms or corporations having a license from said department permitting them to manufacture oleomargarine shall be exempted from this license. Whenever any person, firm or corporation by himself, his or its servant or agent, or as the agent or servant of another, conducts such sale or exchange in more than one place of business, a separate license shall be obtained for each place of business, and a separate fee shall be charged for such license. All wholesalers or jobbers handling oleomargarine shall conduct their business under regulations of cleanliness, sanitation and refrigeration prescribed by the commissioner of agriculture, labor and industry.

History: En. Sec. 15, Ch. 138, L. 1949.

Compiler's Note

The title of commissioner of agriculture, labor and industry as used in this section refers to the commissioner of agriculture, see sec. 3-101.1.

Collateral References

Food \Rightarrow 3.
36 C.J.S. Food § 36.

27-516. Manufacturer's license. It shall be unlawful for any person, firm or corporation to operate or carry on the manufacture of oleomargarine within the state of Montana without first securing a license from the department of agriculture, labor and industry, which license shall expire on the 31st day of December of the year in which it is issued. The following sched-

ule of license fees shall be charged by the department for all licenses issued under this section:

Plants or factories manufacturing one hundred thousand pounds (100,000 lbs.) or less of oleomargarine a year, twenty dollars (\$20.00). An addition of five dollars (\$5.00) shall be made to the fee for any such license for each one hundred thousand pounds (100,000 lbs.) or any fraction thereof annually produced in excess of the first one hundred thousand pounds (100,000 lbs.).

For the first year, or portion thereof before December 31, during which such plant or factory is in operation, the license fee shall be twenty dollars (\$20.00). Thereafter, the total year's production of the applicant for a year immediately preceding the application for a license shall determine the amount of any license required by this section.

History: En. Sec. 16, Ch. 138, L. 1949. labor and industry as used in this section

Compiler's Note

The title of commissioner of agriculture,

refers to the commissioner of agriculture, see sec. 3-101.1.

27-517. Revocation of licenses. All licenses issued by the department under this act, including wholesale and manufacturer's licenses, may be revoked by the commissioner of agriculture, labor and industry of the state whenever the holder of such license shall fail to comply with the laws of the state of Montana relative to the conducting of his place of business under such license, or whenever he shall fail to conduct said establishment in an orderly or sanitary manner. A licensee, upon revocation of his license, shall have the right of appeal to the district court from the order of revocation of the commissioner of agriculture, labor and industry, upon filing a written notice of appeal with the commissioner of agriculture, labor and industry within ten (10) days after service of the order of revocation upon said licensee. Upon appeal, the district court shall hear the matter de novo. If any person whose license has been so revoked by the commissioner shall thereafter continue to conduct or carry on said place of business without a license, he shall be deemed guilty of a misdemeanor and shall be subject to the penalties in this act hereinafter provided.

History: En. Sec. 17, Ch. 138, L. 1949. labor and industry as used in this section

Compiler's Note

The title of commissioner of agriculture,

refers to the commissioner of agriculture, see sec. 3-101.1.

27-518. Penalty. Any person, firm or corporation who either directly or indirectly, or by his or its servant, agent or employee, shall violate any of the provisions of this act, shall be deemed guilty of a misdemeanor, and where no specific penalty is provided, shall be punished by a fine of not more than two hundred dollars (\$200.00) or by imprisonment in the county jail for not more than sixty (60) days, or by both fine and imprisonment.

History: En. Sec. 18, Ch. 138, L. 1949.

27-519. Power of commissioner of agriculture, labor and industry to promulgate rules and regulations. The commissioner of agriculture, labor and industry shall have power, and it shall be his duty, to promulgate all reasonable rules and regulations in aid of and consistent with this act. Such rules and regulations, immediately upon publication, shall have the force

and effect of law, and violation of any of such rules and regulations shall constitute a misdemeanor, punishable as provided in section 27-518.

History: En. Sec. 19, Ch. 138, L. 1949. labor and industry as used in this section refers to the commissioner of agriculture, see sec. 3-101.1.

Compiler's Note

The title of commissioner of agriculture,

27-520. Construction—articles excepted. Nothing herein shall be construed as applying to or including peanut butter, salad dressings, mayonnaise products, pharmaceutical preparations, oil meals, cleansing and flavoring compounds, liquid preservative and illuminating oils.

History: En. Sec. 20, Ch. 138, L. 1949.

27-521. Serving of yellow oleomargarine in public eating places regulated. No person shall possess in a form ready for serving yellow oleomargarine at a public eating place unless a notice that oleomargarine is served is displayed prominently and conspicuously in such place and in such manner as to render it likely to be read and understood by the ordinary individual being served in such eating place or is printed or is otherwise set forth on the menu in type or lettering not smaller than that normally used to designate the serving of other food items. No person shall serve yellow oleomargarine at a public eating place, whether or not any charge is made therefor, unless (1) each separate serving bears or is accompanied by a labeling identifying it as oleomargarine, or (2) each separate serving thereof is triangular in shape.

History: En. Sec. 3, Ch. 99, L. 1953.

27-522. Advertising of oleomargarine regulated. No person shall, in any advertising of oleomargarine, make any representation or suggestion by statement, word, grade designation, design, device, symbol, sound, or any combination thereof, that such oleomargarine is a dairy product, except that nothing herein contained shall prohibit any person from describing any or all of the ingredients used in the manufacture of oleomargarine.

History: En. Sec. 4, Ch. 99, L. 1953.

27-523. Penalty. Any person, firm, or corporation who, either directly or indirectly, or by his or its servant, agent, or employee, shall violate any of the provisions of this act shall be deemed guilty of a misdemeanor and shall be punished by a fine of not more than three hundred dollars (\$300.00) or by imprisonment in the county jail for not more than ninety (90) days, or by both such fine and imprisonment.

History: En. Sec. 7, Ch. 99, L. 1953.

Compiler's Notes

Sections 1, 2, 5 and 6 of Ch. 99, Laws 1953 are compiled as sections 27-501, 27-503, 3-2437 and 3-2443, respectively.

Section 9 of Ch. 99, Laws 1953 read: "Sections 4 and 6 of chapter 138 of the Laws of Montana, 1949, sections 3-2435, 3-2473, 3-2474, and 3-2475, Revised Codes

of Montana, 1947, and all acts and parts of acts in conflict herewith are hereby repealed; provided, however, it is the specific intention that sections 2, 5, and 7 through 20, chapter 138 of the Laws of Montana, 1949, and section 3-2444, Revised Codes of Montana, 1947, are not amended or altered in any way by the passage of this act, but remain in full force and effect."

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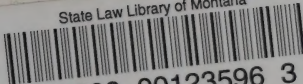
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